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International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its territories and Canada Local No. 151 (SMG and The Freeman Companies d/b/a Freeman Decorating Services, Inc.) *and* Katie M. Martens. Case 14–CB–101524

August 26, 2016

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA AND HIROZAWA

On June 20, 2014, Administrative Law Judge Christine E. Dibble issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief. Additionally, the General Counsel filed a limited cross-exception, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions as modified below,[2] to amend the remedy section of the judge's decision, and to adopt the judge's recommended Order as modified and set forth in full below.[3]

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

There are no exceptions to the judge's finding that the Board has jurisdiction over Freeman Decorating Services, Inc. (Freeman). In any event, the Board's jurisdiction over Freeman is established by uncontroverted evidence. We agree, for the reasons stated by the judge, that the Board also has jurisdiction over SMG/Pershing and that the Respondent operates an exclusive hiring hall with respect to the referral of employees to SMG/Pershing and Freeman. In support of the latter finding, the judge cited *Carpenters Local 1507 (Perry Olsen Drywall)*, 358 NLRB 1 (2012), "and cases cited therein." We do not rely on *Carpenters Local 1507*, a decision that issued at a time when the Board lacked a quorum. See *NLRB v. Noel Canning*, 134 S. Ct. 2550 (2014). We rely instead on the cases cited in *Carpenters Local 1507*.

We also agree, for the reasons stated by the judge, that the Respondent discriminated against nonmembers in violation of Sec. 8(b)(1)(A) and (2) of the Act by granting priority to its members for job referrals for employment with SMG/Pershing and Freeman, and that the Respondent's 10(b) defense to this allegation is without merit. (In support of the former finding, the judge again cited *Carpenters Local 1507*, supra. We rely on the other cases cited in her discussion of this violation.)

Finally, we agree, again for the reasons stated by the judge, that the Respondent violated Sec. 8(b)(1)(A) of the Act by refusing to pay money from its V-Fund, a vacation account funded by employer service fees for its hiring hall referrals, to nonmembers. The judge additionally found that the Respondent violated Sec. 8(b)(1)(A) by refusing to pay money from its V-Fund to union members Les Haake, Dennis Hansen, Steve Hike, Danny Ladely, and Anthony Polanka. We agree with the finding of a violation as to the five named discriminatees, but we do not rely on the judge's finding that the Respondent's requirement that members submit requests for V-Fund payments on a union form was unlawful, and that the V-Fund payment denials were therefore unlawful. Under the duty-of-fair-representation standard, unions are entitled to a wide range of reasonableness in setting rules, and the Respondent acted well within that range of reasonableness in requiring members to submit request forms to obtain V-Fund bonus payments: the Respondent was facing financial difficulties, and giving its members a voluntary opportunity to decline a V-Fund payment was a reasonable measure to take to address those difficulties. However, the evidence does not establish that failure to submit the lawfully required form was the reason for the denials at issue. Rather, as the judge found, the Respondent denied these discriminatees V-Fund payments because they criticized the Respondent's V-Fund policies at a union meeting and retained an attorney who sent a demand letter to the Respondent on their behalf. The discriminatory nature of the Respondent's conduct was demonstrated by the fact that Haake and Hansen, who timely submitted the required requests for payment, were denied the V-Fund payments while all other members who submitted the form were paid the V-Fund bonus. Further, the nonpayment to the five was not justified by the Respondent's purported concern over the legality of making payments to members but not to nonmembers; the Respondent paid *other* members who submitted forms for the V-Fund payments. Thus, the Respondent denied V-Fund payments to these five individuals for discriminatory reasons in violation of Sec. 8(b)(1)(A).

[2] We have amended the judge's conclusions of law consistent with our findings herein.

[3] We amend the judge's remedy in several respects. Preliminarily, we note that Tony Polanka and Anthony Polanka are different individuals. We also note that Anthony Polanka is deceased; thus, all make-whole amounts due him shall be payable to his estate. Backpay for the unlawful refusal to refer Sheila Brunkhorst and Tony Polanka on February 4 and 5, 2013, and the unlawful suspensions from the hiring hall beginning February 7 of Brunkhorst, Tony Polanka, Les Haake, Dennis Hansen, Steve Hike, Danny Ladely, and Anthony Polanka shall be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). In accordance with our recent decision in *King Soopers, Inc*., 364 NLRB No. 93 (2016), we shall also order the Respondent to compensate employees affected by the above-mentioned unlawful refusals to refer and unlawful suspensions for their search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra. For the reasons stated in his separate opinion in *King Soopers*, supra, slip op. at 9-16, our dissenting colleague would adhere to the Board's former approach, treating search-for-work and interim employment expenses as an offset against interim earnings. Backpay for the unlawful failure to pay V-Fund payments to nonmembers and to members Haake, Hansen, Hike, Ladely, and Anthony Polanka shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682

1. *Refusals to refer and suspensions from referrals*. We agree with the judge's findings that the Respondent violated Section 8(b)(1)(A) and (2) by refusing to refer Sheila Brunkhorst and Tony Polanka to the Freeman job at the Cornhusker Hotel on February 4 and 5, 2013,[4] and by suspending Brunkhorst, Anthony Polanka, Tony Polanka, Les Haake, Dennis Hansen, Steve Hike, and Danny Ladely from receiving referrals from its exclusive hiring hall beginning about February 7. We do so applying a duty-of-fair-representation framework.[5] Under this framework, when a union interferes with an employee's employment status for reasons other than the failure to pay dues, initiation fees, or other fees uniformly required, a rebuttable presumption arises that the interference is intended to encourage union membership. As the Board explained more than 40 years ago:

> When a union prevents an employee from being hired or causes an employee's discharge, it has demonstrated its influence over the employee and its power to affect his livelihood in so dramatic a way that we will infer—or, if you please, adopt a presumption that—the effect of its action is to encourage union membership on the part of all employees who have perceived that exercise of power. But the inference may be overcome, or the presumption rebutted, not only when the interference with employment was pursuant to a valid union-security clause, but also in instances where the facts show that the union action was necessary to the effective performance of its function of representing its constituency. [Footnote omitted.]

Operating Engineers Local 18 (Ohio Contractors Assn.), 204 NLRB 681, 681 (1973). Once the General Counsel establishes union interference with employment status in the operation of an exclusive hiring hall, the "union bears the burden of establishing that referrals are made pursuant to a valid hiring-hall provision, or that its conduct was necessary for effective performance of its representational function." *Stagehands Referral Service, LLC*, 347 NLRB 1167, 1170 (2006), enfd. 315 Fed. Appx. 318 (2009).

Turning first to the allegation that the Respondent unlawfully refused to refer Brunkhorst and Tony Polanka to the Freeman job at the Cornhusker Hotel on February 4 and 5, it is undisputed that the Respondent interfered with their employment status by refusing to refer both employees. Accordingly, the Respondent bore the burden of establishing that its refusal to refer them was either "pursuant to a valid hiring-hall provision" or "necessary for effective performance of its representational function." *Stagehands Referral Service*, supra. The Respondent did not rely on a hiring-hall provision to justify its failure to refer Brunkhorst and Tony Polanka, and the judge rejected, on credibility grounds, the Respondent's claim that it did not refer them because of "their prior behavior and inability to work with others assigned to . . . the Freeman job." Accordingly, the Respondent failed to sustain its burden of proof.

Similarly, it is undisputed that the Respondent interfered with the employment status of Sheila Brunkhorst, Anthony Polanka, Tony Polanka, Les Haake, Dennis Hansen, Steve Hike, and Danny Ladely when it suspended them from receiving referrals from its exclusive hiring hall beginning on or about February 7. Again, the Respondent did not rely on a hiring-hall provision to justify these suspensions. And the judge found, and we agree, that the reasons the Respondent advanced for these suspensions were either not credible or contradicted by record evidence.[6] Accordingly, we find that the Respondent failed to establish that the suspensions were "necessary

(1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra. We shall also order the Respondent to compensate all backpay recipients for the adverse tax consequences, if any, of receiving a lump-sum backpay award. See *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10, slip op. at 3 fn. 12 (2014) (respondent that has never been an employer of the discriminatee is subject to tax-compensation remedy but not Social Security reporting requirement). The nonmembers entitled to backpay as a result of the Respondent's failure to make V-Fund payments to them were not identified at the hearing; they shall be identified in compliance. See, e.g., *Electrical Workers Local 724 (Albany Electrical Contractors Assn.)*, 327 NLRB 730, 730 (1999). Finally, we do not rely on the judge's citation, in the remedy section of her decision, to *Teamsters Local 25*, 358 NLRB 54 (2012), a decision issued at a time when the Board lacked a quorum.

In its exceptions, the Respondent advances various contentions regarding its remedial obligations. Some of these contentions merely reiterate the Respondent's challenges to the merits of the unfair labor practice findings and shall not be further addressed. Others, however, relate to the implementation of remedies requiring backpay, restoration of discriminatees to the hiring-hall referral list, and the creation of and referral from a hiring-hall referral list based on objective, nondiscriminatory criteria. The Respondent may raise these issues in compliance.

We shall modify the judge's recommended Order to conform to the Board's standard remedial language and in accordance with *Ferguson Electric Co*., 335 NLRB 142 (2001). Finally, we shall substitute a new notice to conform to the Order as modified and in accordance with *Durham School Services*, 360 NLRB No. 85 (2014).

[4] All dates refer to 2013 unless otherwise indicated.

[5] The duty-of-fair-representation standard is applicable to this allegation because, with respect to Freeman, the Respondent operates an exclusive hiring hall. See, e.g., *Stage Employees IATSE, Local 720 (Tropicana Las Vegas)*, 363 NLRB No. 148, slip op. at 6 (2016) ("It is well established that . . . an operator of an exclusive hiring hall . . . owes a duty of fair representation to all applicants using that hall.").

[6] The judge inadvertently stated that the Respondent's letter to Tony Polanka regarding his suspension referred to his involvement in a lawsuit filed against the Respondent. In fact, the letter does not mention the lawsuit. This does not affect our disposition of the allegation.

for effective performance of its representational function." *Stagehands Referral Service*, supra.[7]

2. *Respondent's work rules*. The Respondent's hiring hall work rules contain the following provisions:

> 9.1.3 Any referent who fails to show up for work and/or walks off a job after accepting a referral shall be subject to the following:
>
> 9.1.3.1 First offense in a twelve month period: $50.00 assessment and removal from the referral list until the fine is paid.
>
> 9.1.3.2 Second offense is a twelve month period: $100.00 fine and removal from the referral list until the fine is paid.
>
> 9.1.3.3 Third Offense in a twelve month period: one year suspension with the suspension to begin on the date of conviction through one calendar year. The suspended referent is not to perform any bargaining unit work while under the imposed suspension. Upon completion of the suspension year, the suspended individual shall have the right to petition the Referral Committee for review and possible reinstatement on the list. This decision shall be made solely by the Referral Committee; all decisions on these matters shall be final and binding on all parties.

The General Counsel alleged, and the judge found, that the Respondent violated Section 8(b)(1)(A) by maintaining work rules 9.1.3, 9.1.3.1, and 9.1.3.2. The Respondent does not challenge the merits of the judge's finding. It represents that it has "[begun] the process of removing the language from its rules." We agree with the judge, for the reasons she states, that this representation does not render the allegation moot.

In adopting the judge's finding that work rules 9.1.3, 9.1.3.1, and 9.1.3.2 are unlawful, we do not find that the maintenance of the rules constituted a violation of the Act per se. See *International Alliance of Theatrical Stage Employees (Freeman Decorating Service)*, 364 NLRB No. 81 (2016) (rejecting General Counsel's contention that similar rules were unlawful per se). Rather, applying the duty-of-fair-representation framework, we find that the General Counsel has established a rebuttable presumption that the work rules would "encourage union membership" within the meaning of *Operating Engineers Local 18 (Ohio Contractors Assn.)*, supra, because the rules affect the employment status of registrants in the Respondent's hiring hall by providing for suspension from referral until fines or assessments are paid. The burden then shifts to the Respondent to rebut this presumption. The Respondent, however, does not argue that these work rules were reasonably designed to preserve the integrity of the referral system, *United Brotherhood of Painters, Decorators & Paperhangers of America, Local No. 487 (American Coatings),* 226 NLRB 299, 301 (1976), or necessary to the effective performance of its function of representing its constituency, *Operating Engineers Local 18 (Ohio Contractors Assn.)*, supra. Accordingly, we find that the Respondent violated Section 8(b)(1)(A) of the Act by maintaining rules 9.1.3, 9.1.3.1, and 9.1.3.2.[8]

3. *The Respondent's constitution and bylaws*. The General Counsel excepts to the judge's dismissal of the allegation that the Respondent's maintenance of Article 12 ("Appeals"), Section 6 ("Exhausting Internal Remedies") of its constitution and bylaws violated 8(b)(1)(A). The provision at issue reads: "The members further consent to be disciplined in the manner provided by this Constitution and Bylaws, and under no circumstances to resort to outside tribunals until all the remedies therein provided shall have been exhausted." The General Counsel argues that the maintenance of this provision was unlawful because the policy did not include language consistent with the four-month limitation on exhaustion of remedies set forth in Section 101(a)(4) of the Labor Management Reporting and Disclosure Act (LMRDA).[9] Contrary to General Counsel's argument, however, we find that the judge's dismissal of this allegation was consistent with well-established case law in this area and that the General Counsel has not provided a

[7] Member Hirozawa does not view this kind of allegation as properly subject to analysis under *Wright Line,* 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert denied 455 U.S. 989 (1982). However, if *Wright Line* were applied to the refusals to refer and suspensions from referral in this case, he would find them unlawful under that standard as well as under the applicable duty-of-fair-representation standard, substantially for the reasons set forth by Member Miscimarra in his partial concurrence.

[8] The judge also found work rule 9.1.3.3 unlawful. However, the complaint did not allege that rule 9.1.3.3 is unlawful, and the General Counsel does not so argue. The judge's inclusion of rule 9.1.3.3 in her discussion and recommended Order appears to have been an inadvertent error. Accordingly, we shall modify the judge's recommended Order to delete the reference to rule 9.1.3.3.

[9] 29 U.S.C. § 411(a)(4). That section provides in relevant part:

> No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: *Provided,* That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof . . . .

compelling reason for reversing this precedent. Accordingly, we adopt the judge's dismissal of this allegation.

In *Scofield v. NLRB*, 394 U.S. 423, 429-430 (1969), the Supreme Court interpreted Section 8(b)(1)(A) of the Act, which contains language both prohibiting labor organizations from interfering with employees' Section 7 rights as well as protecting the ability of a labor organization to "prescribe its own rules with respect to the acquisition or retention of membership therein." The Court determined that, consistent with Section 8(b)(1)(A), unions are free to maintain and enforce their internal regulations, so long as those regulations do not affect a member's employment status or "invade[ ] or frustrate[ ] an overriding policy of the labor laws." Id. at 429.

The Board has consistently recognized that an exhaustion of internal remedies provision in a union constitution reflects a legitimate union interest and is consistent with Section 101(a)(4) of the LMRDA, even if that provision does not specifically reference the 4-month limitation articulated in the LMRDA. For example, in *Operative Plasterers' Local 521*, 189 NLRB 553, 556–557 (1971), the General Counsel alleged that the respondent union violated Section 8(b)(1)(A) by maintaining a provision in its constitution that required all members to "fully exhaust all remedies provided for within this Constitution pertaining to this organization or its Local Union or their membership or their officers and shall not resort to court or administrative proceedings of any description until all remedies provided for herein are fully exhausted." Id. at 555 fn. 4. The Board adopted the judge's finding that the provision at issue did not constitute a *per se* violation of Section 8(b)(1)(A). The judge reasoned that the procedure for resolving members' problems internally served a reasonable purpose, specifically "provid[ing] the organizations with methods of resolving internal disputes so that intrafamily squabbles could be settled intrafamily." Id. at 556. In deciding the case, the judge discussed Section 101(a)(4) of the LMRDA, including its four-month limitation period, as well as cases interpreting that provision. Contrasting the maintenance of a neutral exhaustion of remedies provision with a union's coercive use of such a provision, he concluded "there is no way to say that a section commanding exhaustion of internal remedies is *per se* illegal." Id. at 557. Accordingly, the Board adopted the judge's finding and held that the provision did not violate 8(b)(1)(A), despite the fact that it did not include a reference to the LMRDA's four-month limitation period.

Similarly, in *International Brotherhood of Teamsters (Red Ball Motor Freight*), 191 NLRB 479 (1971), enf. denied on other grounds 462 F.2d 201 (5th Cir. 1972), the Board, citing *Operative Plasterers' Local 521,* held that provisions in the respondent union's constitution providing, among other things, that members "exhaust all remedies provided for in this Constitution and by the International Union before resorting to any court, tribunal or agency" did not constitute restraint and coercion under Section 8(b)(1)(A). As in *Operative Plasterers' Local 521,* the exhaustion provision did not reference the LMRDA Section 101(a)(4)'s 4-month limitation.

Our dissenting colleague, ignoring the clear precedent on this issue, argues that the language of article 12, Section 6 when read together with article 12, Section 1 ("Right of Appeal"), would lead employees to reasonably believe that their obligation to exhaust internal remedies is open-ended, and thus, unlawfully interferes with employees' right to file charges with the Board.[10] Our colleague attempts to analogize this case to those involving employer-mandated arbitration policies that interfere with employees' right of access to the Board. Those cases, which involve policies that employees would reasonably construe to channel all employment-related disputes exclusively *and permanently* into an arbitral forum, to the exclusion of the Board and its processes, are clearly distinguishable. The Respondent's constitution and bylaws expressly allow members to access other forums, after exhausting internal remedies, and LMRDA Section 101(a)(4) ensures that the internal exhaustion may not exceed 4 months, leaving ample time to file a charge with the Board. See *NLRB v. Industrial Union of Marine and Shipbuilding Workers of America*, 391 U.S. 418, 428 (1968) ("We conclude that unions were authorized to have hearing procedures for processing grievances of members, provided those procedures did not consume more than four months of time.").[11]

The dissent, in analyzing this case under *U-Haul Co. of California*, 347 NLRB 375, 377 (2006), enfd. 255 Fed. Appx. 527 (D.C. Cir. 2008), fails to recognize that the Board does not treat a union rule in the same manner as a unilaterally implemented employer workplace rule.

[10] The dissent argues that Article 12, Section 1 further supports a violation because it would be impossible for a member to complete the five-step procedure for exhausting remedies in less than 6 months. However, aggrieved members are not *required* to complete the five-step procedure. The provision states that "[a]ny member aggrieved by the decision, rule, regulation, order or any other act or omission or mandate of an officer or the Executive Board of this Local *may*, after exhausting their remedies within the Local by appeal to the membership, appeal the case in the following order . . . ." [emphasis added].

[11] The dissent suggests that it may be unlawful for a union to impose *any* delay on the filing of charges with the Board. LMRDA Sec. 101(a)(4) obviously contradicts his suggestion, as it expressly permits labor organizations to require their members to exhaust internal procedures, not to exceed 4 months, "before instituting legal or administrative proceedings against such organizations or any officer thereof."

Thus, the issue here is not whether an employee would reasonably interpret Article 12, Section 6 to interfere with their Section 7 rights, as our colleague contends. Rather, as discussed above, the Supreme Court has recognized that internal union rules are reviewed under a different standard. *Scofield*, 394 U.S. at 428; accord *Laborers' Union Local No. 324*, 318 NLRB 589 (1995) (a union is free to adopt and maintain a rule which prohibits distribution of material in its hiring hall, so long as the rule adheres to the guidelines set forth in *Scofield*), enfd. in relevant part 123 F.3d 1176 (9th Cir. 1997). Further, the Board and courts have found provisions requiring union members to exhaust internal union remedies to be unlawful *only* where they have been invoked to interfere with or punish an employee for resort to the Board. See *NLRB v. Marine & Shipbuilding Workers*, 391 U.S. at 424 ("Any coercion used to discourage, retard, or defeat that access [to the Board] is beyond the legitimate interests of a labor organization."); *Operative Plasterers' Local 521*, 189 NLRB at 558–559 (despite facially lawful internal union rule requiring members to exhaust internal remedies before resorting to courts or administrative proceedings, union threat to file internal charges against employees who filed Board charges without having exhausted internal union remedies was unlawful because it was used to coerce member by obstructing "his path to the Board"). It is undisputed that there was no such interference or coercion in this case.

Finally, we note that there is nothing in the text of the LMRDA that requires a labor organization to set forth the four-month limitation in its constitution and bylaws; the LMRDA simply permits the member to proceed with his or her action in court after he or she has pursued reasonable hearing procedures for 4 months. The statute does not make it an actionable offense for a union to have a contrary provision in its constitution and bylaws. Rather, it invalidates any provision in a union's constitution and bylaws which would be inconsistent with the statute's purpose. Section 101(b), 29 U.S.C. § 411(b) ("Any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section shall be of no force or effect."). Furthermore, as recognized in *Operative Plasterers*, the provisions of the LMRDA are not to be interpreted as superseding Board law. Rather, "the LMRA and LMRDA must coexist and complement one another under the statutory scheme." Id. at 557. Accordingly, unlike our dissenting colleague, we decline to interpret Section 101(a)(4) of the LMRDA in a way that would render that provision "paramount" over well-established Board law pertaining to Section 8(b)(1)(A) of the Act. Accord id.

In summary, the Board has long recognized that the maintenance of internal union provisions requiring that internal remedies be exhausted before members resort to outside forums does not violate 8(b)(1)(A) of the Act, even where those provisions do not reference the four-month limitation period contained in the LMRDA. In excepting to the judge's decision here, the General Counsel has not expressly asked us to reverse this well-established precedent, and we find no reason to do so. Accordingly, we agree with the judge's dismissal of this complaint allegation.

AMENDED CONCLUSIONS OF LAW

Substitute the following for Conclusions of Law 3, 4, and 6.

"3. By refusing to refer Sheila Brunkhorst and Tony Polanka for a job with Freeman for discriminatory and arbitrary reasons, the Respondent has violated Section 8(b)(1)(A) and (2) of the Act and has caused or attempted to cause any employer that is signatory to its collective-bargaining agreement to discriminate in violation of Section 8(a)(3) of the Act."

"4. By discriminating against nonmembers by granting priority to its members for job referrals for employment with SMG/Pershing and Freeman, the Respondent has violated Section 8(b)(1)(A) and (2) of the Act and has caused or attempted to cause any employer that is signatory to its collective-bargaining agreements to discriminate in violation of Section 8(a)(3) of the Act."

"6. By suspending seven members (Brunkhorst, Haake, Hansen, Hike, Ladely, Anthony Polanka, and Tony Polanka) from its exclusive hiring hall for discriminatory and arbitrary reasons, the Respondent has violated Section 8(b)(1)(A) and (2) of the Act and has caused or attempted to cause any employer that is signatory to its collective-bargaining agreements to discriminate in violation of Section 8(a)(3) of the Act."

ORDER

The Respondent, International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada Local No. 151, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Operating an exclusive hiring hall without using objective, nondiscriminatory criteria in referring applicants for employment.

(b) Failing and refusing to refer employees from its exclusive hiring hall for arbitrary or discriminatory reasons.

(c) Discriminating against nonmembers by granting priority to union members for job referrals to employers.

(d) Maintaining unlawful rules that authorize the Respondent to refuse to refer employees for work from its exclusive hiring hall until they have paid fines and/or assessments.

(e) Suspending employees from its exclusive hiring hall referral list for arbitrary or discriminatory reasons.

(f) Failing and refusing to remit V-Fund payments to members for discriminatory reasons.

(g) Failing and refusing to remit V-Fund payments to nonmembers because of their membership status.

(h) Causing or attempting to cause any employer that is signatory to its collective-bargaining agreements to refuse to hire any qualified applicant for discriminatory or arbitrary reasons.

(i) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Operate its exclusive hiring hall using objective, nondiscriminatory referral criteria.

(b) Within 14 days from the date of this Order, restore Sheila Brunkhorst, Les Haake, Dennis Hansen, Steve Hike, Danny Ladely, and Tony Polanka to the exclusive hiring hall referral list in their rightful order of priority.

(c) Make Sheila Brunkhorst, Les Haake, Dennis Hansen, Steve Hike, Danny Ladely, Tony Polanka, and Anthony Polanka whole for any loss of earnings and other benefits suffered as a result of their unlawful suspensions from the referral list, in the manner forth in the remedy section of the judge's decision as amended in this decision.

(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful suspensions from the exclusive hiring hall referral list of Sheila Brunkhorst, Les Haake, Dennis Hansen, Steve Hike, Danny Ladely, Anthony Polanka, and Tony Polanka, and within three days thereafter notify them in writing that this has been done and that their removal from the list will not be used against them in any way.

(e) Make Sheila Brunkhorst and Tony Polanka whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful failure and refusal to refer them from its exclusive hiring hall to the Freeman Decorating Services Cornhusker Hotel job, in the manner set forth in the remedy section of the judge's decision as amended in this decision.

(f) Make Les Haake, Dennis Hansen, Steve Hike, Danny Ladely, and Anthony Polanka whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful failure to remit V-Fund payments to them, in the manner set forth in the remedy section of the judge's decision as amended in this decision.

(g) Make nonmembers whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful failure to remit V-Fund payments to them, in the manner set forth in the remedy section of the judge's decision as amended in this decision.

(h) Compensate Sheila Brunkhorst, Les Haake, Dennis Hansen, Steve Hike, Danny Ladely, Tony Polanka, Anthony Polanka, and nonmembers unlawfully deprived of V-Fund payments for the adverse income tax consequences, if any, of receiving lump-sum backpay awards.

(i) Create a referral list based on objective criteria and that does not discriminate based on union membership status.

(j) Within 14 days from the date of this Order, rescind work rules 9.1.3, 9.1.3.1, and 9.1.3.2.

(k) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all hiring-hall referral records, V-Fund payment records, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(l) Within 14 days after service by the Region, post at its facility in Lincoln, Nebraska, copies of the attached notice marked "Appendix."[12] Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees and members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its members by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(m) Within 14 days after service by the Region, deliver to the Regional Director for Region 14 signed copies of the notice in sufficient number for posting by employers signatory to the collective-bargaining agreements, if they wish, in all places where notices to employees are customarily posted.

[12] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(n) Within 21 days after service by the Region, file with the Regional Director for Region 14 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 26, 2016

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER MISCIMARRA, concurring in part and dissenting in part.

I agree with my colleagues' disposition of the allegations in this case in most respects.[1] Contrary to my colleagues, however, I would find merit in the General Counsel's limited cross-exception to the judge's dismissal of the allegation that article 12, section 6 of the Respondent's constitution and bylaws violates Section

[1] I join my colleagues in adopting the judge's findings that the Board has jurisdiction over SMG/Pershing and Freeman Decorating Services (Freeman), that the Respondent operates an exclusive hiring hall vis-à-vis SMG/Pershing and Freeman, and that the Respondent unlawfully discriminated against nonmembers by granting priority to its members for referrals for jobs with SMG/Pershing and Freeman (and the Respondent's 10(b) defense to this allegation is without merit). Because the Respondent operates an exclusive hiring hall vis-à-vis SMG/Pershing and Freeman, I find it unnecessary to rely on the judge's statement, at Sec. III,B,3 of her decision, that "[e]ven if the situation involves a nonexclusive hiring hall, a union owes a 'duty of fair representation' to the workers who use its referral service[.]" I also join my colleagues in adopting the judge's finding that the Respondent unlawfully failed and refused to pay V-Fund money to nonmembers.

For the following reasons, I join my colleagues in adopting the judge's finding that the Respondent unlawfully failed and refused to pay V-Fund money to members Les Haake, Dennis Hansen, Steve Hike, Danny Ladely, and Anthony Polanka. In 2012, the Respondent imposed a requirement on its members to submit a form requesting payment if they wished to receive a V-Fund payment for 2011. Haake, Hansen, Hike, Ladely, and Anthony Polanka objected to the form and would later jointly file suit against the Respondent. Ultimately, two of the five—Haake and Hansen—submitted a request form, but all five were denied V-Fund payments. Even assuming the Respondent had a rational justification for requiring members to request payment—an issue I need not and do not reach—it did not *rely* on that justification when it withheld the disputed V-Fund payments. Rather, it discriminated against Haake, Hansen, Hike, Ladely, and Anthony Polanka because, as the judge found, they criticized the Respondent's V-Fund policies at a union meeting and retained an attorney who sent a demand letter to the Respondent on their behalf. I agree with my colleagues that this was the reason the V-Fund payments were withheld, not any failure to submit V-Fund request forms, because the Respondent withheld payments from all five, including the two who submitted a payment request, while making V-Fund payments to every other union member who requested one. A union breaches its duty of fair representation when its conduct toward a member of the bargaining unit "is arbitrary, discriminatory, or in bad faith." *Vaca v. Sipes*, 386 U.S. 171, 190 (1967). Here, it was discriminatory.

In adopting the judge's finding that work rules 9.1.3, 9.1.3.1, and 9.1.3.2 are unlawful, I agree with my colleagues that the Respondent has not excepted to the judge's unfair labor practice finding (other than to contend the allegation is moot, and I agree with my colleagues that it is not). Accordingly, I find it unnecessary to reach or pass on the General Counsel's contention that work rules 9.1.3, 9.1.3.1, and 9.1.3.2 are unlawful per se. I agree with my colleagues that the judge's reference to rule 9.1.3.3, which the General Counsel did not allege to be unlawful, appears to have been inadvertent and should therefore be deleted from the Order.

Regarding the allegations that the Respondent unlawfully refused to refer Sheila Brunkhorst and Tony Polanka for the Freeman job at the Cornhusker Hotel and unlawfully suspended Brunkhorst, Les Haake, Dennis Hansen, Steve Hike, Danny Ladely, Tony Polanka, and Anthony Polanka from its referral list, I agree with my colleagues, for the reasons they state, that the refusals-to-refer and the suspensions violated Sec. 8(b)(1)(A) and (2) under a duty-of-fair-representation framework.

I would also find that these same actions violated Sec. 8(b)(1)(A) and (2) under *Wright Line*, 251 NLRB 1083 (1980) (subsequent history omitted). With respect to Brunkhorst and Tony Polanka, I find that they engaged in protected concerted activities and that the Respondent was aware of those activities. I so find for the reasons stated by the judge, except I do not rely on the theory of "inherently" concerted activity, which the judge invoked. See *Hoodview Vending Co.*, 362 NLRB No. 81 (2015), slip op. at 5–7 (Member Miscimarra, dissenting); *Alternative Energy Applications, Inc.*, 361 NLRB No. 139, slip op. at 7-8 (2014) (Member Miscimarra, dissenting in part). Further, I agree with the judge's finding that Respondent Business Agent Perry Gillaspie's testimony amounted to an admission that the Respondent refused to refer Brunkhorst and Tony Polanka for discriminatory reasons. Finally, I note that the judge rejected the Respondent's proffered explanations why it failed to refer Brunkhorst and Tony Polanka to the Cornhusker job as not credible, and I join my colleagues in upholding the judge's credibility determinations.

As for the suspensions of Brunkhorst, Les Haake, Dennis Hansen, Steve Hike, Danny Ladely, Tony Polanka, and Anthony Polanka from the hiring-hall referral list, I agree with the judge, for the reasons she states (except, again, her reliance on a theory of "inherently concerted" activity), that each of these individuals engaged in protected concerted activities and that the Respondent was aware of those activities. Moreover, the letters issued to Haake, Hansen, Hike, and Ladely cited their participation in a lawsuit, which they filed collectively against the Respondent, as the reason for their suspensions; the letter issued to Anthony Polanka cited his participation in this lawsuit as one reason among others for his suspension; and the letters issued to Brunkhorst and Tony Polanka cited the same protected concerted activities that motivated the Respondent to refuse to refer them to the Freeman job at the Cornhusker Hotel. Thus, the General Counsel established that protected activity was a motivating factor in all seven suspensions. And the Respondent failed to show that it would have suspended these individuals even in the absence of their protected activity; as the judge found, the reasons the Respondent advanced for these suspensions were either not credible or contradicted by record evidence.

8(b)(1)(A) of the Act because it requires members to exhaust internal union remedies, but Respondent's constitution and bylaws do *not* contain the four-month maximum set forth in Section 101(a)(4) of the Labor Management Reporting and Disclosure Act (LMRDA).

Section 101(a)(4) of the LMRDA states, in relevant part, that unions cannot prohibit their members from suing them, but they may require members to exhaust internal union procedures before filing any lawsuit, provided that the internal exhaustion requirement does not last longer than 4 months. Thus, Section 101(a)(4) states:

> No labor organization shall limit the right of any Member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: Provided, that any such member *may be required to exhaust* reasonable hearing procedures (*but not to exceed a four-month lapse of time*) within such organization, *before instituting legal or administrative proceedings against such organizations or any officer thereof* . . . .[2]

The Respondent requires its members to exhaust internal remedies as permitted under the LMRDA, but the Respondent's constitution and bylaws make no reference to the four-month maximum specified in LMRDA Section 101(a)(4). In this regard, Article 12, section 6 of the Respondent's constitution and bylaws states that "[t]he members . . . consent to be disciplined in the manner provided by this Constitution and Bylaws, and under no circumstances to resort to outside tribunals until *all the remedies therein provided shall have been exhausted*" (emphasis added). And article 12, Section 1 of the Respondent's constitution and bylaws sets forth an extensive series of internal union remedies:

Section 1. Right of Appeal.

> Any member aggrieved by the decision, rule, regulation, order or any other act or omission or mandate of an officer or the Executive Board of this Local may, after exhausting their remedies within the Local by appeal to the membership, appeal the case in the following order: (1) from the decision of the membership of the Local to the International President of this Alliance; (2) from the decision of the International President to the General Executive Board; (3) from the ruling of the General Executive Board to the Alliance in convention assembled and the latter body shall be the tribunal of ultimate judgment. However, in the interim ruling of any proper tribunal of this Local or the Alliance shall be enforced pending disposal of the appeal, unless a stay of the decision has, upon application, been granted. All appeals by a member to the membership of the Local must be heard within sixty (60) days of the date the appeal was filed or the member may appeal directly to the International President.

The General Counsel argues that the Respondent's omission of the 4-month limitation period referenced in LMRDA Section 101(a)(4) is unlawful because, contrary to the express language of the LMRDA, the Respondent's constitution and bylaws impose an open-ended restriction on the right of employees to file legal claims against IATSE. Based on the wording of Article 12, Section 6—particularly when read together with Article 12, Section 1—employees would reasonably believe that their obligation to exhaust internal remedies is open-ended. Moreover, Section 10(b) of the Act prevents parties from pursuing any claims alleging violations of the NLRA unless a charge is filed with the Board within 6 months after a party knows or reasonably should have known of the alleged violation. Therefore, the Respondent's exhaustion requirement—not subject to any maximum—could effectively prevent members from pursuing any claims against the Respondent arising under the NLRA, given that the exhaustion of internal union procedures may take longer than 6 months.

I agree with the General Counsel's argument. Contrary to my colleagues, I would find that the Respondent's constitution and bylaws unlawfully interfere with employees' right to file charges with the Board. Article 12, section 6 of that document states that "*under no circumstances*" are members "to resort to outside tribunals until *all* the remedies . . . provided" under the Respondent's constitution and bylaws "shall have been exhausted" (emphasis added). In turn, article 12, Section 1 sets forth a five-step procedure for exhausting internal union remedies: (i) the decision of an officer or the Executive Board of Local 151; (ii) appeal to Local 151's membership; (iii) appeal to "the International President of this Alliance"; (iv) appeal to "the General Executive Board"; and finally (v) appeal to "the Alliance in convention assembled." Although article 12, section 1 states that members *may* avail themselves of the last three steps, article 12, section 6 provides that aggrieved members *must* pursue *all* these appeals before resorting to "outside tribunals" such as the Board, since "under no circumstances" are members "to resort to outside tribunals until all the remedies . . . provided" under the Respondent's constitution and bylaws

[2] LMRDA Sec. 101(a)(4) (emphasis added).

"shall have been exhausted." And except by sheer luck of timing, it is impossible to pursue all these steps in fewer than 6 months, since "the Alliance"—i.e., the International Union—assembles in convention *once every four years*.[3]

The Board has not hesitated to find similar interference with access to the Board unlawful when committed by employers. Thus, under *U-Haul Co. of California*, 347 NLRB 375, 377 (2006), the Board will find unlawful, under Section 8(a)(1) of the Act, an employer's policy that employees would reasonably interpret to preclude them from filing charges with the Board. Indeed, the Board has applied this analysis in a flurry of recent cases involving arbitration policies that, in the Board's view, fail to make it sufficiently clear that employees remain free to file charges with the Board—even where the agreements preserve the right to file Board charges in so many words.[4] In my view, the *U-Haul* principle is no less applicable to the allegation here, along with the Board's often-stated reminder that employees should not be held to the standard of an attorney trained in the nuances of administrative law.[5] A reasonable union member would interpret the strict, "under no circumstances" prohibition against resorting to "outside tribunals" until internal union remedies have been exhausted—read in conjunction with the Respondent's byzantine, multistep appeals process—as meaning that he or she cannot file a charge with the Board until the internal appeals process has ended. This language is a trap for the unwary, as it says nothing about LMRDA Section 101(a)(4)'s prohibition against requiring exhaustion of internal union remedies beyond 4 months.[6]

Citing *Scofield v. NLRB*, 394 U.S. 423, 429–430 (1969), my colleagues say that my application of *U-Haul Co. of California*, supra, to the Respondent's constitution and bylaws is misplaced because, under *Scofield*, internal union rules are reviewed under a different standard than unilaterally implemented workplace rules. Under the Supreme Court's *Scofield* standard, however, a union is "free to enforce a properly adopted rule" *if*, among other things, the rule "*impairs no policy Congress has imbedded in the labor laws . . . .*" Id. at 430 (emphasis added). When it enacted Section 10(b) of the NLRA, Congress "imbedded in the labor laws" a policy of requiring charges alleging violations of the Act to be filed and served within 6 months of the date a party knows or reasonably should have known of the alleged violation. As explained above, the Respondent's exhaustion rule impairs this policy and thus crosses the line—drawn by the Court in *Scofield*—into illegality.[7]

The Board has likewise not hesitated—especially in recent years—to invalidate employer-maintained policies or rules that employees would "reasonably construe" to interfere with NLRA-protected rights, even if such policies or rules do not expressly limit Section 7 activity. See, e.g., *William Beaumont Hospital*, 363 NLRB No. 162 (2016); *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004).[8]

I disagree with my colleagues' attempt to distinguish employer interference with Board charge filing, on the one hand, from the union interference with Board charge

[3] See http://iatse.net/about-iatse/structure-iatse (last visited June 20, 2016) ("All officers of the IATSE are elected during the IATSE International Convention, which is held every four years.").

[4] See, e.g., *SolarCity Corp.*, 363 NLRB No. 83 (2015) (finding agreement stating that "this Agreement does not prohibit me from pursuing . . . claims with local, state, or federal administrative bodies or agencies authorized to enforce or administer employment related laws . . . . Such permitted agency claims include filing a charge or complaint with . . . the National Labor Relations Board" unlawfully interferes with Board charge filing); *Securitas Security Services USA, Inc.*, 363 NLRB No. 182 (2016) (finding agreement stating that "[c]laims may be brought before an administrative agency but only to the extent applicable law permits access to such an agency notwithstanding the existence of an agreement to arbitrate. Such administrative claims include without limitation claims or charges brought before . . . the National Labor Relations Board" unlawfully interferes with Board charge filing).

[5] See, e.g., *SolarCity Corp*., supra, slip op. at 5 (citing *Ingram Book Co.*, 315 NLRB 515 (1994)); *Labor Ready Southwest, Inc.*, 363 NLRB No. 138, slip op. at 1 fn. 2 (2016) (same).

[6] My colleagues' argument that Article 12, Section 1 does not *require* members to complete the entire five-step internal appeals procedure is irrelevant. The issue is what the language in Article 12, Sections 1 and 6 *says*, not whether a particular member chooses to pursue internal union appeals all the way to "the Alliance in convention assembled." The Respondent's open-ended, multistep appeals process that sets no end date and fails to refer to LMRDA Section 101(a)(4)'s four-month limit on exhaustion of internal union remedies unlawfully interferes with Board charge filing, and this interference exists regardless whether any particular union member chooses to avail him- or herself of the entire process—just as an employer-mandated arbitration agreement that interferes with Board charge filing is unlawful regardless whether any particular employee ever resorts to arbitration under that agreement.

[7] To the extent that *Operative Plasterers' Local 521*, 189 NLRB 553 (1971), and *International Brotherhood of Teamsters (Red Ball Motor Freight*), 191 NLRB 479 (1971), hold to the contrary, I believe those cases were wrongly decided.

[8] I dissented in relevant part from the Board majority's decision in *William Beaumont Hospital* (and similar decisions) based on my disagreement with the *Lutheran Heritage* "reasonably construe" standard. See *William Beaumont Hospital*, supra, slip op. at 7-24 (Member Miscimarra, concurring in part and dissenting in part). However, unlike those cases, there is no question that the exhaustion requirement in Respondent's constitution and bylaws—because it is unlimited in time, contrary to the LMRDA's requirements—could prevent union members from filing timely unfair labor practice charges with the Board, which would be a prerequisite to the pursuit of any NLRA claims against the Respondent. In this regard, Respondent's constitution and bylaws are unambiguous, and the instant case involves none of the other considerations that have prompted me to disagree with the "reasonably construe" standard.

filing in the instant case. In my view, there is no merit in my colleagues' contention that the Respondent's exhaustion requirement merely *delays* access to the Board, whereas an employer-mandated arbitration agreement that precludes Board charge filing prohibits such access. For one thing, my colleagues do not cite any cases for the proposition that it is permissible for any parties—employers or unions—to impose a mandatory delay on an employee's filing of charges with the Board, and I have concerns that even a time-limited restriction on Board charge filing may violate the Act. Here, however, my colleagues disregard the fact that the exhaustion requirement set forth in Respondent's constitution and bylaws contains no time limit. On their face, therefore, Respondent's constitution and bylaws may operate to prevent union members from pursuing claims for violation of the NLRA against the Respondent, given Section 10(b)'s six-month limitations period for filing Board charges.

Further, notwithstanding the wording of Article 12, section 6, my colleagues treat LMRDA Section 101(a)(4) as effectively guaranteeing that any member's internal union proceedings will end, at the latest, in 4 months, leaving "ample time" to file a Board charge within Section 10(b)'s six-month limit. However, their finding in this regard is based on two assumptions, both of which I think are misguided in the present circumstances.

First, my colleagues assume that LMRDA Section 101(a)(4) requires union proceedings to halt at 4 months. In my view, however, Section 101(a)(4) prohibits a union from *requiring* its members to exhaust union procedures beyond 4 months. Nothing in LMRDA Section 101(a)(4) imposes a requirement that all internal union procedures be completed within 4 months, and I am confident that in many cases, internal union claims processing, for legitimate reasons, takes substantially longer than 4 months to complete.[9] I believe Section 101(a)(4) prohibits unions from *requiring* exhaustion of union remedies beyond the four-month mark. Because Section 101(a)(4) does not preclude internal union procedures from taking more than 4 months to complete, and because Respondent's internal claims processing may continue for years, there is no doubt that employees may lose their right of access to the Board by doing what Article 12, section 6 of the constitution and bylaws requires: exhausting all internal union remedies, and "under no circumstances" resorting to any "outside tribunal" until exhaustion is concluded.

Second, even assuming LMRDA Section 101(a)(4) could be reasonably interpreted to impose a hard stop on internal union proceedings after 4 months, my colleagues implicitly assume that the Respondent will comply with this obligation and discontinue all claims processing at the four-month mark. However, nothing in the Respondent's constitution and bylaws indicates this will occur. As noted previously, the terminal step of the Respondent's internal claims procedures—an appeal "to the Alliance in convention assembled"—can only be taken once every four years. Consequently, the mere existence of a four-month limit in the LMRDA, even if given the interpretation adopted by my colleagues, does not prevent the Respondent's constitution and bylaws from unlawfully interfering with Board charge filing.[10]

Accordingly, for the above reasons, I respectfully dissent in part from my colleagues' decision.

Dated, Washington, D.C. August 26, 2016

Philip A. Miscimarra, Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

[9] My colleagues quote the following language from the Supreme Court's decision in *NLRB v. Industrial Union of Marine and Shipbuilding Workers of America*, 391 U.S. 418, 428 (1968), in support of their interpretation: "We conclude that unions were authorized to have hearing procedures for processing grievances of members, provided those procedures did not consume more than four months of time." However, the issue in that case was whether the union violated Sec. 8(b)(1)(A) by disciplining a member for bypassing union procedures altogether and filing a charge with the Board. To resolve that issue, the Court did not need to decide whether LMRDA Sec. 101(a)(4) requires all internal union claims processing to be completed within 4 months. Consistent with the language of the LMRDA, I believe the above-quoted language means, at most, that unions cannot have mandatory internal hearing procedures that restrict the filing of external charges or claims against the union for a period longer than 4 months.

[10] Contrary to my colleagues' suggestion, I am not treating the provisions of the LMRDA as "superseding Board law." I simply believe that here, given the open-ended appeals process described in the Respondent's constitution and bylaws, language setting forth the four-month limitation had to have been included to avoid a 8(b)(1)(A) violation.

Form, join, or assist a union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT operate an exclusive hiring hall without using objective, nondiscriminatory criteria in referring applicants for employment.

WE WILL NOT fail and refuse to refer employees from our exclusive hiring hall for arbitrary or discriminatory reasons.

WE WILL NOT discriminate against nonmembers by granting priority to union members for job referrals to employers.

WE WILL NOT maintain unlawful rules that authorize us to refuse to refer employees for work from our exclusive hiring hall until they have paid fines and/or assessments.

WE WILL NOT suspend employees from our exclusive hiring hall referral list for arbitrary or discriminatory reasons.

WE WILL NOT fail and refuse to remit V-Fund payments to members for discriminatory reasons.

WE WILL NOT fail and refuse to remit V-Fund payments to nonmembers because of their membership status.

WE WILL NOT cause or attempt to cause any employer that is signatory to a collective-bargaining agreement with us to refuse to hire any qualified applicant for discriminatory or arbitrary reasons.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights listed above.

WE WILL operate our exclusive hiring hall using objective, nondiscriminatory referral criteria.

WE WILL, within 14 days from the date of the Board's Order, restore Sheila Brunkhorst, Les Haake, Dennis Hansen, Steve Hike, Danny Ladely, and Tony Polanka to the exclusive hiring hall referral list in their rightful order of priority.

WE WILL make Sheila Brunkhorst, Les Haake, Dennis Hansen, Steve Hike, Danny Ladely, Tony Polanka, and the estate of Anthony Polanka whole for any loss of earnings and other benefits resulting from their unlawful suspensions from the referral list, less any net interim earnings, plus interest, plus reasonable search-for-work and interim employment expenses.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful suspensions of Sheila Brunkhorst, Les Haake, Dennis Hansen, Steve Hike, Danny Ladely, Anthony Polanka, and Tony Polanka from the exclusive hiring hall referral list, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that their removal from the list will not be used against them in any way.

WE WILL make Sheila Brunkhorst and Tony Polanka whole for any loss of earnings and other benefits suffered as a result of our unlawful failure and refusal to refer them from our exclusive hiring hall to the Freeman Decorating Services Cornhusker Hotel job, less any net interim earnings, plus interest, plus reasonable search-for-work and interim employment expenses.

WE WILL make Les Haake, Dennis Hansen, Steve Hike, Danny Ladely, and Anthony Polanka whole for any loss of earnings and other benefits suffered as a result of our unlawful failure to remit V-Fund payments to them, plus interest.

WE WILL make nonmembers whole for any loss of earnings and other benefits suffered as a result of our unlawful failure to remit V-Fund payments to them, plus interest.

WE WILL compensate Sheila Brunkhorst, Les Haake, Dennis Hansen, Steve Hike, Danny Ladely, Tony Polanka, the estate of Anthony Polanka, and nonmembers unlawfully deprived of V-Fund payments for the adverse tax consequences, if any, of receiving lump-sum backpay awards.

WE WILL create a referral list based on objective, nondiscriminatory criteria.

WE WILL, within 14 days from the date of the Board's Order, rescind work rules 9.1.3, 9.1.3.1, and 9.1.3.2.

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, MOVING PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFTS OF THE UNITED STATES, ITS TERRITORIES AND CANADA LOCAL NO. 151

The Board's decision can be found at www.nlrb.gov/case/14-CB-101524 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington D.C. 20570, or by calling (202) 274-1940.

William F. LeMaster, Esq., for the General Counsel.
Krista Carlson, Esq., for the Respondent.
Katie M. Martens, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

CHRISTINE E. DIBBLE, Administrative Law Judge. This case was tried in Lincoln, Nebraska, on January 22 and 23, 2014. Katie M. Martens (the Charging Party) filed the initial charge on March 29, 2013, and amended it on October 29, 2013.[1] On November 5, 2013, the General Counsel issued the complaint against the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada Local No. 151 (SMG and the Freeman Companies d/b/a Freeman Decorating Services, Inc.) (the Respondent).[2] The Respondent filed a timely answer denying all material allegations. (GC Exhs. 1-A to 1-N.)

The complaint alleges that the Respondent operated an exclusive hiring hall, and utilizing it, attempted to cause or caused employers to violate Section 8(a)(3) of the Act in violation of Section 8(b)(2) and (1)(A) of the National Labor Relations Act (NLRA/the Act) by the following conduct: Since September 29, the Respondent has discriminated against nonunion employees by granting priority to Respondent's members for job referrals from its exclusive hiring hall for employment with the Freeman Companies d/b/a Freeman Decorating Services, Inc. (Freeman), SMG, and other employers;[3] on or about February 4 and 5, 2013, the Respondent failed and refused to refer employees Sheila Brunkhorst (Brunkhorst) and Tony Polanka (Polanka Junior)[4] from its exclusive hiring hall to Freeman;[5] on or about February 7, 2013, the Respondent suspended from its referral list Brunkhorst, Les Haake (Haake), Dennis Hansen (Hansen), Steve Hike (Hike), Danny Ladely (Ladely), Anthony Polanka (Polanka Senior),[6] and Polanka Junior.[7] The complaint also alleges that Respondent separately violated Section 8(b)(1)(A) by the following conduct: Since September 29, the Respondent maintained a rule in its constitution and bylaws prohibiting legal proceedings against it by employees without providing for the 4-month limitation on such prohibition required by the Labor Management Reporting and Disclosure Act (LMRDA) Section 101(a)(4);[8] since September 29, the Respondent has maintained referral rules that allow for the refusal to refer an employee to enforce the collection of a fine and/or assessment;[9] since September 29, the Respondent failed and refused to remit V fund moneys to employees who are not members of the Respondent;[10] and since November 26, the Respondent has failed and refused to remit V fund moneys to Haake, Hansen, Hike, Ladely, and Polanka Senior.[11]

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The complaint alleges that Freeman is an employer that has maintained an agreement and practice requiring that the Respondent be the exclusive source of referrals of employees. Freeman, a corporation with an office and place of business in Des Moines, Iowa, provides event and exhibition planning, setup, and management for convention and trade shows. I find that in conducting its operations during the 12-month period ending September 30, 2013, Freeman performed services valued in excess of $50,000 in states other than the State of Iowa.[12] I also find that Freeman is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. (GC Exh. 35.)

The complaint also alleges that SMG (herein called SMG/Pershing)[13] is an employer that has maintained an agreement and practice requiring that the Respondent be the exclusive source of referrals of employees. SMG/Pershing, a corporation with an office and place of business in Lincoln, Nebraska, is engaged in the business of managing, marketing, and developing entertainment venues for governmental and commercial enterprises. I find that SMG has purchased services valued in excess of $50,000 which were furnished to SMG/Pershing directly from points outside the State of Nebraska within the last 12 months. I also find that SMG is an

[1] All dates hereinafter are in 2012, unless otherwise indicated.

[2] Abbreviations used in this decision are as follows: "Tr." for transcript; "GC Exh." for General Counsel's exhibit; "R. Exh." for Respondent's exhibit; "CP Exh." for Charging Party's exhibits; "ALJ Exh." for administrative law judge exhibit; "Jt. Exh." for joint exhibit; "GC Br." for General Counsel's brief; "R. Br." for Respondent's brief; and "CP Br." for Charging Party's brief.

[3] This allegation is alleged in par. 7(d) of the complaint.

[4] Tony Polanka is the son of Anthony Polanka. Although his legal name is "Tony Polanka," there was testimony that members referred to him as Junior and Anthony Polanka as Senior in order to distinguish between the father and son. Therefore, I will continue that distinction in this decision.

[5] This allegation is alleged in par. 7(e) of the complaint.

[6] The parties stipulated that Polanka Senior died on April 13, 2013.

[7] This allegation is alleged in par. 7(f) of the complaint.

[8] This allegation is alleged in par. 6 of the complaint.

[9] This allegation is alleged in par. 7(c) of the complaint.

[10] This allegation is alleged in par. 8(b) of the complaint.

[11] This allegation is alleged in par. 8(c) of the complaint.

[12] Pursuant to the NLRB investigation into the charges, Freeman acknowledged that it met the Board's discretionary monetary standards and is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. (GC Exh. 35.)

[13] SMG refers to the entity that manages venues globally. SMG/Pershing refers to SMG's local management of the Pershing Center venue in Lincoln, Nebraska.

employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The Respondent, however, argues that SMG/Pershing Center does not meet the Board's discretionary monetary standards. The Respondent contends that because testimony on this point was not limited to SMG/Pershing but rather addressed the purchase of services by SMG as a corporation, which manages over 200 different facilities globally, the discretionary monetary standard has not been established.

I find the Respondent's argument is without merit. Thomas Lorenz (Lorenz), general manager of Pinnacle Bank Arena and Pershing Center for SMG, testified that SMG has purchased services in excess of $50,000 from entities outside the State of Nebraska within the last 12 months. It is irrelevant whether this amount applies to SMG globally or only SMG/Pershing. The Respondent failed to provide case law to support an argument for making a distinction. Board law is contrary to the Respondent's argument. In *Siemons Mailing Service*,[14] the Board explained "Under the new standards, the Board will continue to apply the concept that it is the impact on commerce of the totality of an employer's operations that should determine whether or not the Board will assert jurisdiction over a particular employer. (Footnote omitted.) Accordingly, the Board will continue its past practice of totaling the commerce of all of an employer's plants or locations to determine whether the appropriate jurisdictional standard is met." Based on this standard, SMG clearly meets the jurisdictional standard.

Further, I find that the alleged unfair labor practices at issue are exactly the type of activities Congress envisioned when passing the Act. Changing the terms and conditions of employment in retaliation for engaging in concerted activity would tend to lead to a labor dispute that would "burden or obstruct commerce" or the "free flow" of commerce. The Respondent has alleged that the actions have caused the loss of labor calls. Therefore, presumably, reducing the amount of services sold intrastate and the amount of services needed to purchase from interstate suppliers, thus burdening the "free flow" of commerce. Stoppage or disruption of work in Lincoln involves interruptions in the steady stream into and out of Nebraska, of credit, cash, and supplies. Congress has explicitly regulated transactions and goods in interstate commerce and also activities which in isolation might be found to be "merely local but in the interlacings of business across state lines adversely affect such commerce." See *Polish National Alliance v. NLRB*, 322 U.S. 643 (1944); *NLRB v. Reliance Fuel Oil Corp*., 371 U.S. 224 (1963).

Accordingly, I find that SMG purchased services valued in excess of $50,000 which were furnished to SMG at the Pershing Center directly from points outside the State of Nebraska, and is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondent admits, and I find that it is a labor organization. However, the Respondent denies that it is a labor organization within the meaning of Section 2(5) of the Act. The Respondent provided no bases or arguments to support the reasons for its denial.

[14] 122 NLRB 81, 84 (1958).

Section 2(5) of the Act reads:

> The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

The evidence contains collective-bargaining agreements that the Respondent has entered into with various employers on behalf of its membership, and testimony from the Respondent's officials about negotiating wages, working conditions, and other terms and conditions of employment on behalf of its membership. Finally, the Respondent's constitution and bylaws make it abundantly clear that it considers itself a labor organization within the meaning of Section 2(5) of the Act. (GC Exh. 8.) Therefore, I find that the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Overview of Respondent's Operation

The Respondent is a union that represents individuals (members and nonmembers) in Lincoln, Nebraska, to provide set-up, support, and tear-down of the equipment and staging requirements for entertainers and exhibitors producing shows in Nebraska. (GC Exh. 12.) Trades represented by the Respondent, include but are not limited to, stagehands, lighting technicians, and rigging technicians. The current membership is approximately low 30s. In 2013, the following members were elected to the Respondent's executive board: President Denny Buffum (Buffum), Vice President Breck Shilling (Shilling), Secretary Erik Holy (Holy),[15] Treasurer Eugene Trausch (Trausch), Business Agent T. Perry Gillaspie (Gillaspie), and Sergeant at Arms John Green (Green). Polanka Junior immediately preceded Gillaspie as the Respondent's business agent. The executive board oversees the Respondent's general operations. During the same period, the following individuals served as the Respondent's trustees: Gary Larsen (Larsen), Brian Wait (Wait), and Tom Stickney (Stickney). (GC Exh. 2.)

B. Respondent's Referral Committee and Job Referral Rules

In 2012 and 2013, the Respondent's referral committee developed a list of qualified individuals within the industry and referred those individuals for jobs with outside employers. (Tr. 28–30.) In 2013, Gillaspie, Jessie Snyder (Snyder), Larsen, Wait, and Michael Madcharo (Madcharo) were appointed by Buffum to serve on the referral committee. As the business agent, Gillaspie was responsible for, among other duties, referring members and nonmembers for jobs as they became available.

The referral committee's duties are also codified at Section 6.0 of the Respondent's work rules which states

> 6.1 The President of the Union shall appoint a Referral

[15] Business Agent T. Perry Gillaspie testified that GC Exh. 2 is an accurate list of the officers elected from 2007 to 2013 but notes that in 2012, three people held the secretary position at separate times.

> Committee consisting of five (5) Union members in good standing, the term of office shall be for one year.
>
> 6.2 The Referral Committee shall be responsible for hearing complaints regarding the operation of this Referral System and shall hear all appeals concerning these rules. The Referral Committee shall not have the authority to change these rules.
>
> 6.3 Three (3) members of the Referral Committee shall constitute a quorum, All decisions shall be made by a majority vote of those members present at any meeting.
>
> 6.4 The Referral Committee shall meet as the need arises, or when so call by the Executive Board.

Section 6.0 of the work rules explains the reasons for suspending or removing individuals from the referral list and subsequent penalties. It reads

> 7.1 The Union may suspend or remove individuals from the referral list as follows:
>
> 7.1.1 Any person who commits a major or minor offense in violation of the Disciplinary Code will be notified in writing to the referents last known address listing the date and nature of the offense. The referent will be suspended ten (10) calendar days after receipt of written notice unless the person has filed a timely appeal. In case of appeal, no penalty shall be imposed until the appeal procedure has been completed except in cases of serious offense. All letters of recommendation and offenses shall be kept on file indefinitely.
>
> 7.1.2 Referral fees are due and payable at receipt of paycheck and shall be deducted from said paycheck by Local 151's payroll service.
>
> 7.1.3 Referents obtaining Stage and Convention work within the Union's jurisdiction without being referred by the Union or without permission of the Business Representative will be removed immediately from the Referral List.
>
> 7.1.4 A referent that voluntarily removes his/her name from the Referral List, and later wishes to return to the Referral List shall be required to notify the Union in writing of same. The referral committee has the right to accept or reject the request.

(GC Exh. 7.) It is undisputed that these work rules pertaining to the referral list were in effect during the relevant period.

C. Complete Payroll Service, Inc.'s Agreements with Respondent and Gillaspie

In January 2013, the Respondent contracted with Complete Payroll Service, Inc. (Complete), located in Omaha, Nebraska, to provide its payroll and accounting services. (GC Exhs. 10, 11.) Anthony Gross is president of Complete. His brother, John Gross, also plays a role in the overall operation of the company. In February or March 2013, Gillaspie was hired by Complete as the full time labor director.

On or about October 4, 2013, the Respondent entered into an agreement with Complete which read in relevant part:

> 3. IATSE Local No. 151 fulfills these requirements [to provide set-up, support, and tear-down of the equipment and stage requirements for entertainers and exhibitors producing shows in Nebraska] by contracting with Complete Payroll who provides Complete Payroll employees to perform such services. The Complete Payroll employees may be IATSE Local No. 151 members or may be non-members. Hereinafter said persons shall be referred to as "IATSE workers" to distinguish them from other Complete Payroll
>
> 5. The IATSE Local No. 151 member and non-member workers who are provided to the production companies and others through IATSE Local No. 151's organization are solely employees of Complete Payroll.

(GC Exhs. 12, 13.) Also, once Complete became the payroll processing company for the Respondent, the Respondent notified members that they had to submit to Complete an updated W-4 form, I-9 form (employment eligibility), authorization for direct deposit form, blank check, copy of their social security card, and valid state identification. (GC Exh. 28.) The information was needed to process and disburse the members' paychecks.

Likewise, Complete entered into a contract with Gillaspie on October 4, 2013. The contract listed his duties as:

> a. Hire, direct, and supervise the Complete Payroll employees that IATSE Local No. 151 provides to the contractors through IATSE Local No. 151's organization (Perry Gillaspie may do so either directly or by delegation of these duties to the person of his choosing); and
> b. Collect the funds from the contractors that have contracted with IATSE Local No. 151 and who have used Complete Payroll's employees through IATSE Local No. 151's organization.

(GC Exh. 13.) According to Gillaspie, in January 2013, the Respondent's referral committee relinquished all referral duties to him as labor director for Complete and retained only the responsibility of creating the referral list. However, I do not credit his testimony on this point. It is clear that the contractual language between Complete and Gillaspie authorized him to fire IATSE workers, both members and nonmembers.[16] Further, if he needed assistance referring individuals for jobs, two employees at Complete helped him to fill job requests from employers, and one of the executive board members can also assisted. Likewise, it is established that Gillaspie maintained his position as the Respondent's business agent, even after his hiring as Complete's labor director. Despite his argument that the Respondent no longer exercises control over the referral process, the evidence establishes otherwise.

As noted above, the Respondent's referral rules were in effect during the relevant period. Those rules show that the Respondent, through its referral committee, had ultimate control

[16] Gillaspie explained that nonmembers also refers to casual and extra workers. (Tr. 80.)

over who was placed and remained on, and removed from the referral list. (GC Exh. 7.) Gillaspie's duties as Complete's labor director are the same as his responsibilities as the Respondent's business agent. The Respondent's constitution and bylaws gives the business agent full charge of the Respondent's local office and authority to represent it in all dealings with employers. Gillaspie's contract with Complete simply reinforces that authority. Further, it was in his role as the Respondent's business agent that Gillaspie exercised his authority not to refer members (Brunkhorst and Polanka Junior) for jobs with outside employers (which I will discuss in more detail later). Gillaspie's testimony on this issue is also suspect because he gave shifting testimony in response to often leading questions by counsel for the Respondent. As an example, he explained "At some point last year in early spring, I turned [the referral list] over to the referral committee and then they turned it back over to me to be used. So at that point, they took possession of the referral list." (Tr. 134.) This appears to be a complicated way to say that the Respondent maintains control of the referral process but allows Gillaspie, as its agent and Complete's labor director, to administer those duties.

D. Gillaspie's Responsibilities for Developing & Administering the Referral Process

Within 3 months of being appointed to the Respondent's referral committee, Gillaspie resigned because he felt it was a conflict with his position as labor director with Complete. However, he retained his position on the Respondent's executive board as the business agent. Gillaspie explained that when he became the business agent no one gave him a referral list, billing information, referral procedures, telephone or telephone line. The only resources he received to enable him to carry out his responsibilities of referring individuals for work was a computer stripped of data and a list of the names of approximately 30 members with phone numbers. The list of names he received for referrals did not contain nonmember names. Since the list did not contain the members' seniority dates, he created a new referral list starting with these names and gave them all a seniority date of January 1, 2012, regardless of their initiation date into the union. Nonmembers that worked the Blake Shelton concert were also given a seniority day of January 1, 2012. (Tr. 129.) Subsequent names were added to the referral list in sequential order, regardless of whether they were union members. In his affidavit to the National Labor Relations Board (NLRB/the Board) Gillaspie explained his referral practice as follows

> "So if I receive a request for five stagehands from Pershing Center, I will go into my referral program and start at the top of the list, which is based on their experience. I then go down the list based on qualifications and ability. After I go through our Local 151 member list, I will sometimes contact IATSE Local 42 and other sister locals to see if they have any qualified journeyman available. At that point, I will go through my casual or extra list. The membership is aware of my referral process. I have announced my process to them on more than one occasion."

(Tr. 87.)[17]

After leading questions posed to him by the Respondent's counsel, Gillaspie changed his testimony by noting that he found qualification more important to him in making referrals than experience of availability and he defined experience and seniority as the same. (Tr. 128, 133.)

E. Alleged Unlawful Provisions in Respondent's Constitution, Bylaws, and Work Rules

It is alleged that the provisions under Section 9.0 of the Respondent's work rules are unlawful because they authorize the removal from the referral list of employees who have been fined for misconduct or rule violations until the fine has been satisfied. The relevant sections read

> 9.1.3 Any referent who fails to show up for work and/or walks off a job after accepting a referral shall be subject to the following:
>
> 9.1.3.1 First offense in a twelve month period: $50.00 assessment and removal from the referral list until the fine is paid.
>
> 9.1.3.2 Second offense is a twelve month period: $100.00 fine and removal from the referral list until the fine is paid.
>
> 9.1.3.3 Third Offense in a twelve month period: one year suspension with the suspension to begin on the date of conviction through one calendar year. The suspended referent is not to perform any bargaining unit work while under the imposed suspension. Upon completion of the suspension year, the suspended individual shall have the right to

(GC Exh. 7.)

Section 101(a)(4) of the Labor-Management Reporting and Disclosure Act (LMRDA). Section 101(a)(4) reads

> Protection of the Right to Sue—No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization of its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: Provided, That any such member may be required to exhaust reasonable hearing pro-

[17] During the hearing Gillaspie attempted to disavow this portion of his affidavit. He claimed that he misspoke and he should have explained that he always refers the qualified individual first and then the most experienced person who is available. He denied considering a person's journeyman status in making his referral decisions. (Tr. 82–84, 88–89.) I do not credit his denial that the statement he made in his affidavit was incorrect. In May 2013, Gillaspie provided his affidavit to the Board's agent. Presumably, he reviewed his affidavit and had ample time to notify the Board's agent or the Respondent's counsel of any inaccuracies. Notably, Gillaspie repeated the testimony he gave in the affidavit to the Respondent's counsel when she contacted him for clarification requested by the Region. (Tr. 83–88; GC Exh. 24.)

cedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof; And provided further, That no interested employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition.

The Respondent's current local constitution and bylaws were in effect during the relevant period. (GC Exh. 8.) It is undisputed that article 12, section 6.0 of the local constitution and bylaws addresses exhaustion of internal remedies but does not mention the 4-month limitation required by the LMRDA.

F. Marriott Cornhusker Job Referral Incident on February 4 and 5

The underlying event leading to the charge that the Respondent unlawfully failed to refer Brunkhorst and Polanka Junior for a job occurred on February 5, 2013. On that date, Polanka Junior was driving past the Marriott Cornhusker Hotel (Cornhusker Hotel) and spotted a Freeman truck in front. Since he was first on the referral list for Freeman work and was not contacted, he decided to stop in the hotel to investigate. Polanka Junior spoke to Wes Backstrom (Backstrom)[18] who explained he had been called to work the job with Dan Stoner (Dan), Dale Stoner (Dale), and Brian Wait (Wait). Backstrom told him they had set up the event space on February 4, 2013, and returned on February 5, 2013, to clear the event space (also referred to as a teardown). Polanka Junior tried to contact Buffum to get information on why he was not called to work the Freeman job but was only able to leave a voicemail message. Buffum never returned his call. Polanka Junior left the hotel but returned with Brunkhorst later the same day because she was also higher on the seniority list than Dan, Dale, and Wait. They saw Dale and Dan outside the hotel and asked them when they received the call to work the Freeman job. Dan and Dale responded, ". . . if we were going to bump them off because they knew we had seniority over them, and we said no. . . ." (Tr. 249.) The conversation lasted 2 to 5 minutes. Polanka Junior and Brunkhorst proceeded inside to the hotel's ballroom and encountered Wait. They had a discussion that lasted about 5 minutes.[19] Brunkhorst and Polanka Junior left, and once outside of the hotel, Polanka Junior encountered Trausch and made a sarcastic comment to him. Trausch responded that he had been called to the jobsite "because there could be some kind of disturbance going on at the Cornhusker Hotel." (Tr. 253.) Polanka Junior complained that he and Brunkhorst were not referred for the Freeman job at the hotel. Trausch responded, ". . . we needed to support the elected board and their decisions, I needed to support. As far as us getting along with the Local, we just needed to drop the lawsuits and discuss this and try to solve it within the Local without involving other legal means to resolve internal union affairs." (Tr. 466.) Brunkhorst went to her car and Polanka Junior continued talking with Trausch about the need for the union members to solve their differences and work harmoniously. The entire conversation lasted less than 10 minutes.

G. Vacation Fund (V-Fund) Procedures and Payments

For approximately 20 years, the Respondent has maintained a vacation account commonly referred to as the V-Fund. (Tr. 58.) Members were paid bonuses annually from the fund based on 5 percent of the employee's gross earnings. The moneys in the fund were derived from a portion of the processing fee the Respondent charged for referring workers to employers. In addition to payment for payment of wages for hours worked, the employers paid a processing fee to the Respondent. Over the years the fee has ranged from 29.7 and 31.5 percent. Included in the processing fee were expenses that the Respondent had for State and Federal taxes, Social Security contributions, worker's compensation, general liability insurance, payroll processing, and unemployment insurance. The processing fee also included 5percent for the V-fund bonus and 5 percent for member directed retirement benefit (cash annuity). (GC Exh. 27.) Despite receiving a processing fee from employers for both members and nonmembers, the Respondent disbursed the annual V-fund bonus only to members. The portion of the fee received for nonmembers remained in the Respondent's treasury. (GC Exh. 31.)

H. Nonpayment of V-Fund Bonus in 2012

Except for the sergeant at arms, John Green, all of the local union officers in 2012 were newly elected.[20] Following the election of new local leaders, an issue arose regarding the continued annual payment of the V-fund. Beginning with the February monthly membership meeting and throughout 2012, the trustees and other officers discussed suspending payment of the V-fund bonus for 2011 and not issuing them at all for 2012

[18] Backstrom is the foreman for Freeman and was supervising the job at the hotel on February 4 and 5, 2013.

[19] There was conflicting testimony about whether the exchange was loud and its proximity to other individuals in the ballroom. Wait testified that during the discussion with Junior and Brunkhorst, Junior swore at him, and he felt threatened by them. According to Wait the disagreement involved raised voices, and it occurred within 12-feet of some of the event's participants with no background noise to keep them from overhearing the heated exchange. (Tr. 420–421.) Junior denied swearing at Wait. He and Brunkhorst allege that Wait started the conversation by telling them it was not the appropriate time or place for a confrontation to which Junior responded "Now you see why this Union is screwed up." (Tr. 250–251.) According to Junior and Brunkhorst, the brief exchange was carried on at a normal conversational level in a corner of the 75 feet by 75 feet ballroom. Junior testified that during his and Brunkhorst's conversation with Wait, the only other people nearby were Dan, Dale, and Backstrom who were all standing about 10 to 15 feet from them. I find the overall evidence supports my finding that Polanka Junior's and Brunkhorst's version of the conversation was more credible than Wait's rendition. There was no third-party testimony to support Wait's version. Although Backstrom mentioned the incident to Scott Young, Freeman's sales manager, he found it so uneventful that he could not recall the details. There is also no credible evidence that Freeman ever complained to the Respondent about Polanka Junior's and Brunkhorst's action that day. Based on the totality of the evidence and the witnesses' overall demeanor, I do not find Wait's testimony credible on this point.

[20] In 2012, Brian Wait became the only new trustee. Dean Smith's term as trustee expired in January 2013 and Gary Larson's term as trustee expired in January 2014. (GC Exh. 2.)

because of a lack of funds. In the February membership meeting Buffum told the members that the V-fund bonus would not be paid in 2012. During the March membership meeting, it was noted that "hopefully" the following month V-fund bonus checks would be paid. (GC Exh. 17.) At the April membership meeting Gillaspie put forth a motion to pay the V-fund bonuses to members when funds became available. The motion proposed to authorize payment of the V-fund bonuses to members for work performed in 2011. The motion was seconded by Tom Stickney (Stickney) and approved by the membership. In about April, the Respondent gave members forms to complete and return to receive their V-fund bonus. (GC Exhs. 16, 17.) The form read in part:

> Calendar Year 2011 expenses exceeded income by approximately $25,000. Funds for the V Fund check were transferred from the Local 151 treasury (CD). Please check the appropriate box and return to the treasurer. ASAS
>
> ___ For the good of the local, I decline a V fund check for the calendar year 2011
>
> ___ Taking a V fund check is financially irresponsible for the local, however, I choose to claim a V fund check for the calendar year 2011.

(GC Exh. 16.) Several of the members signed the form and accepted the V-fund bonus, while other members chose not to receive the funds. (GC Exh. 16.) Additionally, some of the members objected to the form's language and others objected to a requirement that they had to sign the form in order to receive their check. Specifically, Brunkhorst, Haake, Hansen, Hike, Ladely, Polanka Senior, and Polanka Junior objected to signing the form.

Prior to the Respondent's June membership meeting, Polanka Senior and Haake consulted an attorney about the legality of the form sent to members to sign to receive their V-fund bonuses. By letter dated May 30, the attorney, Joy Shiffermiller (Shiffermiller), notified the Respondent that she had consulted with some members of the local about V-fund payments and determined that failure to pay the bonus "is in violation of the wage payment and collection act." (GC Exh. 14.) The letter also read:

> In addition, the contract is still in force for this entire year so current comments about discontinuing the payment for this next year is inappropriate.

(GC Exh. 14.) During the June membership meeting, the letter from Shiffermiller was discussed. The meeting's notes describes the discussion that occurred about the attorney's letter threatening action for nonpayment of the V-fund bonus as follows:

> V-Fund: Discussion about letter from lawyer, Denny reads pledge calls out people who went to the lawyer and broke their pledge. . . . Lawyer letter: no one takes responsibility, Perry talks about meetings are the forum to state case, no joy there you [go] tointernational, if not then you go outside. The letter writers didn't do this, breaking their pledge to the Union, and didn't have the courage to stand up and take responsibility for doing it in open meeting.

(GC Exh. 17.) Several union members again voiced their objections to the language of the original form sent to members to sign to receive a V-fund bonus payment. After much discussion, Gillaspie agreed to modify the form to delete the offending language and extend the deadline for signing and submitting the form to receive the V-fund bonus to June 15. (GC Exh. 17; Tr. 60–61.) The modified form read:

> Would you like a V-Fund check for 2011?
>
> ___ Yes
>
> ___ No

(GC Exh. 16.)

The treasurer's report dated June 4 indicates that 26 members submitted the V-fund request forms for work performed in 2011. Among those 26 members who submitted the forms, 13 declined a bonus check and 13 members accepted it. Following the June 4 treasurer's report, Hansen and Haake submitted forms requesting a V-fund check for 2011. By the June 15 deadline, Brunkhorst, Polanka Junior, Haake, and Hansen submitted their request to receive V-fund payments. (GC Exh. 16, 17.) There is no indication that prior to June 15, Hike, Ladely, or Polanka Senior submitted the V-fund request form for work performed in 2011. Subsequent to the June membership meeting, Haake had several conversations with Gillaspie inquiring about when the remaining members would receive their V-fund money. Gillaspie told him that the Respondent's treasurer or trustees did not want to sign the V-fund bonus checks. Further, Gillaspie informed Haake that he would likely seek legal advice about issuing payments from the V-fund. Despite Gillaspie's response, the Respondent paid all other members except Haake, Hansen, Hike, Ladely, Polanka Senior, and those members who rejected the payment.

I. Suspension from the Referral List for Seven Members in 2013

By letter dated February 7, 2013, the Respondent notified seven of its members that they were suspended from the referral list for the remainder of the 2013 calendar year. Brunkhorst, Haake, Hansen, Hike, Ladely, Polanka Senior, and Polanka Junior received suspension letters. (GC Exh. 20.) Brunkhorst, Haake, and Polanka Junior were also notified orally of their suspensions. (Tr. 254–255, 294, 319–320.) Each of the seven members was suspended for the same actions. However, Brunkhorst, Polanka Junior, and Polanka Senior were also notified of additional bases for their suspensions

J. Underlying Incidents that Formed the Bases of the Seven Members' Suspensions in 2013

On September 20, Haake, Hansen, Hike, Ladely, and Polanka Senior filed a lawsuit in the County Court of Lancaster County, Nebraska. In their complaint, the plaintiffs alleged that the Respondent's failure to pay their V-fund bonuses was a violation of the Nebraska Wage Payment and Collection Act. (GC Exh. 18.) On November 26, the Respondent responded to the lawsuit and also filed a counterclaim. (GC Exh. 19.) As of

the date of the hearing, the lawsuit was pending, and the Respondent had not paid the V-fund bonus for work performed in 2011 to Haake, Hansen, Hike, Ladely, and Polanka Senior. (Tr. 63.)

The letter issued to Haake, Hansen, Hike, and Ladely describes the action that caused their suspension as follows:

> Bringing suit against Local 151 before exhausting procedures for redress outlined in Local 151's Constitution and Bylaws. As a result of this suit, venues and employers of Local 151 have expressed concern about the Local's ability [to] meet its duties and obligations, and questioned the solidarity of the Local.

(GC Exh. 20.) This was the only reason given to Haake, Hansen, Hike, and Ladely as the basis for their suspension.

In addition to filing a lawsuit against the Respondent, Polanka Senior's letter informed him that he was also suspended from the referral list for:

> Discussing Local 151's internal matters with current and potential clients of Local 151 in a manner designed to embarrass and denigrate the Local. This action places existing and future contract relationships with these organizations at risk.

(GC Exh. 20.) The underlying incident giving rise to the second reason for Polanka Senior's suspension was his meeting with Brunkhorst and Donald Adams (Adams), the production manager for SMG Lincoln and the Nebraska State Fair, to resolve Brunkhorst's wage dispute. (Tr. 68–71, 159–160.)

The Respondent notified Polanka Junior that he was suspended for the following reasons:

> 1) Visiting Local 151's payroll service on 31 January 2013 and a [sic] creating a disturbance at their place of business. This disturbance resulted in the potential loss of business to Complete Payroll, placed Local 151's new relationship with Complete Payroll at risk, and brought embarrassment to the Local.
>
> 2) Interfering with Local 151's call at the Cornhusker Hotel on 4 February 2012. These actions caused the client Freeman Decorating to question the Local's ability to complete the call in a competent manner, embarrassed Freeman Decorating in from of its client the Nebraska Bankers Association, and embarrassed the Local in front of Freeman Decorating and the Nebraska Bankers Association.

(GC Exh. 20.) The reasons given for Polanka Junior's suspension refer to his visit with Brunkhorst to Complete's offices on January 31, 2013, and his encounter on February 5, 2013, with several workers at the Cornhusker Hotel that was discussed earlier in the decision.

Brunkhorst's letter informed her that she was being suspended from the referral list because of the following actions:

> 1) Bringing suit against Local 151 before exhausting procedures for redress outlined in Local 151's Constitution and Bylaws. As a result of this suit, venues and employers of Local 151 have expressed concern about the Local's ability [to] meet its duties and obligations, and questioned the solidarity of the Local.
>
> 2) Discussing Local 151's internal matters with current and potential clients of Local 151 in a manner designed to embarrass and denigrate the Local. This action places existing and future contract relationships with these organizations at risk.
>
> 3) Visiting Local 151's Payroll Service on 31 January 2013 and a [sic] creating a disturbance at their place of business. This disturbance resulted in the potential loss of business to Complete Payroll, placed Local 151's new relationship with Complete Payroll at risk, and brought embarrassment to the Local.
>
> 4) Interfering with Local 151's call at the Cornhusker Hotel on 4 February 2012. These actions caused the client Freeman Decorating to question the Local's ability to complete the call in a competent manner, embarrassed Freeman Decorating in from of its client the Nebraska Bankers Association, and embarrassed the Local in front of Freeman Decorating and the Nebraska Bankers Association.

(GC Exh. 20.) Brunkhorst's suspension letter references as the bases for her suspension the small claims action she filed against the Respondent on January 11, 2013; her discussion with Adams to resolve her wage dispute for work she performed at the Nebraska State Fair; her visit on January 31, 2013, with Polanka Junior to Complete's office and discussion with one of its owners; and her visit on February 5, 2013, with Polanka Junior to the Cornhusker Hotel.

The encounter between Brunkhorst, Polanka Junior, and other members at the Cornhusker Hotel has been discussed earlier in this decision. Another incident that formed one of the bases for Brunkhorst's suspension involved her repeated complaints about her wages for working the Nebraska State Fair. Since 1995, Brunkhorst has worked the Nebraska State Fair held annually in August. She is always referred for the job through the Respondent's business agent. In August 2012, she worked at the state fair but did not receive timely payment. She raised the topic with the Respondent at the October membership. Brunkhorst explained, "I asked if the State Fair bill had been presented to the State Fair board. At that point, it had not been. The business agent [Gillaspie] presented me a version that he was going to present to the State Fair board." (Tr. 321.) She "pointed out" some mistakes in the bill to Gillaspie who refused to make any changes to the bill. During the meeting, she questioned other members who had also worked the state fair about their pay. Brunkhorst discovered that those members also felt that the Respondent was not adequately paying them for the work they performed. After determining that her proposed pay for the event was inaccurate, Brunkhorst contacted Adams. She asked Adams if she could review a copy of the State Fair bill he received from the Respondent's business agent, Gillaspie. She told Adams that the billing for her services was incorrect. Brunkhorst also mentioned to him (presumably at a later conversation) that she and other union members had filed a small claims lawsuit against the Respondent. Adam's provided corroborating testimony that Brunkhorst never made negative comments about the Respondent to him.

During the November membership meeting, Brunkhorst

again raised the issue of her pay for the Nebraska State Fair. The Respondent did not respond to her concerns. Brunkhorst ". . . sent an email in early December to the president [Buffum] outlining the mistakes that [she] found in the bill and the additional payments [she] felt that [she] deserved." (Tr. 326.) She also broached the topic at the December membership meeting. The Respondent asked Brunkhorst to attend its executive board meeting to talk about the wage issue and she agreed. However, she left without presenting her concerns because of a disagreement with the executive board about whether she could video tape the meeting. She also consulted with Polanka Senior and Polanka Junior in their capacity as former officers for the Respondent. Polanka Senior contacted Adams on Brunkhorst's behalf without disparaging the Respondent. Despite her and other members' efforts, the Respondent did not resolve to Brunkhorst's satisfaction her concerns about her wages for working the Nebraska State Fair. Consequently, on January 11, 2013, Brunkhorst filed a small claims action against the Respondent in the County Court of Lancaster County, Nebraska for wages owed. (GC Exh. 21.)

Another basis for Brunkhorst's suspension was her visit with Polanka Junior to Complete's office. On January 31, 2013, Brunkhorst and Polanka Junior went to Complete's office in Omaha, Nebraska, to submit their W-4 forms and ask why they received paychecks despite their failure to provide the requested documents. They spoke with John Gross in his office and asked to review the payroll documents that were on file for them. Polanka Junior wanted to review the paperwork Complete had on file for him because the name on his paycheck was inaccurate. John Gross could not find any paperwork on Polanka Junior or Brunkhorst but told them that he would speak with his brother, Anthony, about the matter and get back with them. They also questioned him about the contract between the Respondent and Complete. John Gross assured them that it was a written signed 2-year contract and verified that Complete's fee for handling the Respondent's payroll services was 22.5 percent. Their discussion with John Gross was cordial and lasted approximately 20 minutes.[21] Brunkhorst provided corroborating testimony about their conversation with John Gross.

K. Exclusive Hiring Hall

1. SMG/Pershing

A threshold question in this case is whether the Respondent operated an exclusive hiring hall with SMG/Pershing and Freeman. The General Counsel alleges the Respondent maintained an exclusive referral relationship with SMG/Pershing through contractual language and practice.

The Respondent counters that there was not an exclusive hiring hall agreement with SMG/Pershing because its contract with SMG/Pershing was 1) never ratified by the local membership; 2) was negotiated by someone who lacked authority to do so; 3) the contract expired on February 28, 2012, and the Respondent has not maintained a written agreement with SMG/Pershing since the expiration of the contract; and 4) the contract language does not establish an exclusive referral relationship.

Based on the evidence, I find that the Respondent's and SMG/Pershing's had a practice of SMG/Pershing utilizing labor referred through the Respondent before obtaining labor elsewhere and that this establishes an exclusive referral relationship.

The Supreme Court defines "exclusive" within the context of the job referral system as:

> The word "exclusive" when used with respect to the job referral systems is a term of art denoting the degree to which hiring is reserved to the union hiring hall. Hiring is deemed to be "exclusive," for example, if the union retains sole authority to supply workers to the employer up to a designated percentage of the work force or for some specified period of time, such as 24 or 48 hours, before the employer can hire on his own.

Breininger v. Sheet Metal Workers International Association Local Union No. 6, 493 U.S. 67, 71, 110 S.Ct. 424, 428 (1989). It is well established that an exclusive hiring hall may be created by written or oral agreement or by practice. See *Southwest Regional Council of Carpenters (Perry Olsen Drywall)*, 358 NLRB 1, slip op. at 1 fn. 2 (2012), and cases cited therein. An exclusive hiring hall exists when an employer has the right to reject individuals referred by a union; is required to use a union for referrals for a certain time period; and has a contractual right to use a certain number or percentage of its own employees for a job. *Breininger* at 73, fn. 1; *Local 334 (Kvaerner Songer, Inc.),* 335 NLRB 597, 599–600 (2001); *Teamsters Local Union No. 174 (Totem Beverages, Inc.)*, 226 NLRB 690, 690 (1976).

It is undisputed that there is no collective-bargaining agreement (CBA) between the parties. However, general manager for SMG/Pershing Center, Thomas Lorenz (Lorenz), was responsible for establishing the bargaining relationship with the Respondent that has been in existence for more than 18 years. (Tr. 197–198.) Although the Respondent and SMG/Pershing did not have a ratified CBA, Lorenz and the Respondent's business agent at the time, Polanka Junior, signed a letter of understanding for Contracted Services (LOU) on May 18, 2011, and May 4, 2011, respectively. The terms of the agreement were in effect from the date of signing until February 28, 2012. (GC Exh. 3.) The relevant part of the LOU reads:

> NON-EXCLUSIVE SERVICE PROVIDER:
>
> On those occasions when Local 151 cannot meet the staffing demands of an event, Pershing/SMG will supplement Local's call with its own personnel or with another service provider.

(GC Exh. 3.) Subsequently, the Respondent and SMG/Pershing

[21] Gillaspie testified that based on unidentified reports, he was concerned that the Respondent's and Complete's business relationship was endangered by Brunkhorst's and Polanka Junior's behavior at Complete's office. However, I do not credit his testimony on this point. Gillaspie's testimony was vague and in response to a leading question by the Respondent's counsel. Further, there was no testimony from John Gross disputing Brunkhorst's and Polanka Junior's description of their visit. Equally important, there was no corroborating or other evidence to support Gillaspie's testimony. It is also significant that months after Brunkhorst's and Polanka Junior's visit to the Complete office, Complete signed a contract for services with the Respondent and hired Gillaspie as its labor director. These actions are not indicative of an endangered business relationship.

added an addendum to the LOU which clarified the fee structure for billable expenses. (GC Exh. 27.) Although the wage rate has changed, the Respondent and SMG/Pershing continue to operate under the same terms of the expired LOU with a few minor changes. (Tr. 200–201.)[22]

The Respondent argues that the LOU simply makes clear that SMG/Pershing can use its own personnel or labor from other sources when the Respondent cannot meet SMG/Pershing's staffing needs. The Respondent presented witnesses to testify that SMG/Pershing did not exclusively use workers referred by the Respondent to staff all of its jobs. For example, Wait testified that "for many years" he has performed work for SMG/Pershing under his private business, Brian Wait Lighting Services. He has also worked at the annual Rib Fest as the lighting director for McCray Lighting and Production, which was hired by SMG/Pershing to provide lighting for the event. (Tr. 392–393.) According to Wait, he worked other events at SMG/Pershing through his private company without being referred by the Respondent.

I find that Wait's testimony, however, is insufficient to show that there was not an exclusive relationship. For many of the years Wait worked events at Pershing Center, SMG was not the management company. Consequently, Wait's working relationship at Pershing is irrelevant for the years prior to SMG taking over as the management company. In addition, his testimony lacked specificity about the jobs he got directly from SMG/Pershing without being referred by the Respondent. Wait performed lighting work on some Rib Fests, New Year's Eve shows, and MMA Fighting. According to him, however, he did not receive any of those jobs as a result of being referred by the Respondent, nor did any union members work those jobs with him. (Tr. 393.) I do not find his testimony on these points persuasive because it lacks specificity about when he worked the events, if SMG was the management company, how many laborers he worked with on those jobs, the percentages that were union workers, the members that were hired directly by SMG, the Respondent, or another source. Equally important, Wait failed to establish that he had direct knowledge regarding how each person was hired to work the aforementioned events.

In support of its argument against an exclusive referral arrangement, the Respondent also points to Brunkhorst's testimony admitting "she worked for Pershing/SMG following her suspension from IATSE's referral list." (R. Br. 12.) However, Brunkhorst's admission pertained to an event, Luminners, where she worked one night as a runner at the Pershing Center in 2013.[23] The General Counsel's brief correctly sets out why Brunkhorst's work at Luminners does not establish a nonexclusive hiring hall. "The testimony at hearing established that the Luminners show was originally scheduled to take place at an outdoor venue called the Pinewood Bowl. However, due to rain, within 24 hours, emergency arrangements were made to move the concert to the Pershing Center. Respondent provided no additional evidence concerning the use of runners at the Pershing Center beyond this one limited exception." (GC Br. 33.) The evidence is clear that Brunkhorst was hired to work at Pinewood Bowl and Pershing Center was a last minute weather emergency substitution.

The evidence persuades me that the Respondent and SMG/Pershing established an exclusive hiring hall through a consistent practice. Lorenz, in his position as the general manager for SMG/Pershing, continues to hire labor referred by the Respondent for the classifications covered by the LOU before hiring outside its terms. Lorenz and his staff have never hired "off the street" instead of using labor referred by the Respondent.[24] (Tr. 202–203.) Adams, production manager for SMG Lincoln, provided corroborating testimony that the Respondent is the sole labor provider for the entertainment at Pinewood Bowl, Pershing Center, and Pinnacle Bank Arena. (Tr. 160-161.) Pursuant to the provisions of the LOU, SMG/Pershing obtained all of its labor through the Respondent without advertising for workers or hiring them "off the street." In keeping with the relevant provision of the LOU, SMG/Pershing has infrequently exercised its right to use its own personnel or another "service provider." (GC Exh. 3.)

While the Respondent argues that SMG/Pershing frequently uses labor that has not been referred by it, the evidence indicates otherwise. It is undisputed that the LOU between the parties allows SMG/Pershing to "supplement [the Respondent's] call with its own personnel or with another service provider" when the Respondent was unable to meet the staffing demands of an event. SMG/Pershing management and a former union official gave credible testimony that this provision was used infrequently. Regardless, the Board has long held such provisions do not negate the exclusivity of a referral arrangement. See, e.g., *Theatrical Wardrobe Union Local 769 (Broadway in Chicago)*, 349 NLRB 71, 72–73 (2007) (employer hired outside the union referral list on a few occasions when the list was exhausted); *Morrison-Knudsen*, 291 NLRB 250, 258 (1988).

The Respondent's argument that the LOU was invalid because it was not ratified by the membership is also without merit. There is no credible evidence to show that it was a requirement or standard practice for the membership to ratify all contracts (or any contract) that the executive board entered into on behalf of the Respondent. Polanka Junior gave undisputed testimony that while he was the business agent, and during the union meetings he attended, contracts were never put up for a ratification vote by the membership. (Tr. 229–230.) Haake provided corroborating testimony that based on his more than 47 years in the union, it has not been the Respondent's normal practice to put agreements and contracts before the general membership for a ratification vote. He explained that the

[22] The complaint at par. 7(d) charges the Respondent with discrimination in the use of its exclusive hiring hall to refer workers for employment with Freeman, SMG/Pershing, and "other employers." Although evidence was presented that the Respondent also has a written agreement with SMG/Pinewood Bowl to provide it labor and a verbal agreement with SMG/Pinnacle Bank Arena to provide labor, the General Counsel failed to present any other evidence to establish that the Respondent referred workers to "other employers" through an exclusive hiring arrangement. (Tr. 198.) Therefore that portion of the complaint is dismissed.

[23] The runner position is also covered by the parties' LOU.

[24] Gillaspie testified that SMG has hired from off the street. I credit Lorenz's testimony on this point.

agreement or contract was discussed in the meeting and "if anybody had any objections to it being signed or agreed upon, they had [the] right to a say." (Tr. 292.) However, there is no credible evidence that a member's objection voided the agreement or contract. Board law has established that ratification is a requirement to the creation of a contract only when the parties have an expressed agreement to such effect. See *Observer-Dispatch*, 334 NLRB 1067 (2001)]? There is no evidence of an express agreement that ratification by the membership was required for the LOU with SMG/Pershing to be valid.

Last, it is nonsensical to believe that Gillaspie, as the business agent, did not have either express or implied authority to negotiate the LOU on behalf of the Respondent. Article 7, section 5 of the Respondent's constitution and bylaws reads in pertinent part:

> The Business Agent shall have full charge of the office of this Local, represent it in all dealings with employers, but shall at all times be under the supervision of the Executive Board.

(GC Exh. 8.) The actions of Gillaspie and the executive board establish that Gillaspie has express and implied authority from the executive board to enter into binding agreements and contracts on the Respondent's behalf. There is no evidence that anyone on the executive board (or the general membership) objected to the agreements and contracts Gillaspie (or past business agents) negotiated and executed on behalf of the Respondent (LOU with SMG/Pershing, contract with Complete, CBA, and successor agreement with Freeman). These agreements were negotiated and signed by the business agents and enforced by the Respondent. Despite the Respondent's argument that Gillaspie did not have authority to enter into contracts on behalf of the Respondent, it is notable that the Respondent never sought to have the agreements and contract declared void by a court of law. Again, the Respondent adhered to the terms of the agreements and contracts for the length of their terms; and in the case of Freeman sought to negotiate and entered into a successor agreement. (GC Exhs. 4, 5, 6.)

2. Freeman Decorating

The Respondent and Freeman entered into a CBA effective September 1, 2010, to August 31, 2013. (GC Exh. 4.) A successor agreement was effective September 1, 2013, to August 31, 2016. (GC Exh. 6.) Both agreements contain the following relevant language:

> The Employer agrees that the work described above shall be performed only by qualified workers assigned by the Union through its job referral procedure.

(GC Exhs. 4, 6.) Scott Young, Freeman's sales manager, is responsible for notifying the Respondent's business agent when Freeman needs labor for an event. He makes the "labor calls" by sending an email to the business agent, notifying him or her that he needs workers. Young does not deviate from this practice.[25] (Tr. 404, 406; GC Exhs. 4, 6, 33, 34.) Prior to February 4, 2013, the Respondent worked on average 4 to 6 labor calls year for Freeman.

Based on the evidence, I find that the Respondent has operated an exclusive hiring hall for work it performs for Freeman.

In the case at hand, the parties' written agreement and practice show that laborers must be referred by the Respondent to obtain work with Freeman, i.e., they cannot be hired directly by Freeman off the street or through a referral from other sources. While Freeman occasionally uses its own foremen to oversee the labor of the workers, may reject a referred worker, or hire other workers if the Respondent is unable to fill a numerical request, it does not negate the exclusivity of the agreement between the parties. The Board has consistently held that these types of limited exceptions do not make an otherwise exclusive referral arrangement nonexclusive. See, e.g., *Pipefitters Local 247 (Inland Industrial Contractors, Inc.)*, 332 NLRB 1029, 1031–1032 (2000) (employer had right to request up to 50 percent of employees by name and to hire from other sources if union failed to furnish workers without 48 hours); *Ironworkers Local 843 (Norglass, Inc.)*, 327 NLRB 29, 31 (1998) (employer had right to request 50 percent of employees by name, to reject any applicant referred by the union, and to employ applicants directly at jobsite if union was unable to fill the employer's requisition within 24 hours).

The Respondent argues that it did not maintain an exclusive hiring hall with Freeman because the fact it conducted so little work for Freeman infers that Freeman was getting workers from other sources in the area; the contract with Freeman was invalid because it had not been ratified by the membership; and the Respondent has "never disciplined any member for working for Freeman directly instead of going through the Local." (R. Br. 17.)

None of the Respondent's arguments are persuasive. The evidence establishes that the Respondent received calls from Freeman to work 4–6 events during the period at issue. None of the parties presented evidence to show that Freeman had work for more than that number, and if it did how much more. Second, there is no credible evidence to show that it was a requirement or standard practice for the membership to ratify all contract (or any contracts) that the executive board entered into on behalf of the Respondent. See *Observer-Dispatch*, 334 NLRB 1067 (2001)]? There is no evidence of an express agreement that ratification by the membership was required for the contract with Freeman to be valid. Furthermore, the express language of the contract and its successor agreement clearly states that "the work described above shall be performed only by qualified workers assigned by the Union through its job referral procedure." (GC Exhs. 4, 6.) Witnesses confirmed that the job referral practice was carried out by Freeman according to the terms of the agreement and, except in rare circumstances, workers were not hired outside of the referral system. Finally, even assuming the Respondent never disciplined members who worked for Freeman without being referred by the Respondent, it is irrelevant to the question of whether the Respondent maintained an exclusive hall arrangement with Freeman.

Accordingly I find that the Respondent operated an exclusive hiring hall with Freeman and SMG/Pershing.

[25] The Respondent argues that Young does deviate from the practice and therefore should not be credited on this point. However, I credit Young's testimony because there was credible corroborating testimony. (Tr. 244–245.)

III. DISCUSSION AND ANALYSIS

A. Legal Standards

Section 8(b)(2) of the Act provides that it is an unfair labor practice for a labor organization or its agents "to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) [of subsection (a)(3) of this section] or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership."[26]

Unions can maintain and enforce internal regulations if those regulations do not affect a member's employment status or "invade or frustrate an overriding policy of the labor laws . . ." *Scofield v. NLRB*, 394 U.S. 423, 429 (1969). Nevertheless, a union operating an exclusive hiring hall cannot stop an employee from being hired or cause an employee's discharge, even if it does so pursuant to an internal union rule. The Board will then presume that the effect of the union's action is to unlawfully encourage union membership because the union has displayed to all users of the hiring hall its power over their livelihoods." *Stage Employees IATSE Local 720 (AVW Audio Visual)*, 332 NLRB 1, 2 (2000), revd. on other grounds 333 F.3d 927 (9th Cir. 2003).

In *Stagehand Referral Service*[27] the Board explained, "The Supreme Court has upheld the legality of hiring hall referral systems, acknowledging that "the very existence of a hiring hall encourages union membership," but holding that "the only encouragement or discouragement of union membership banned by the Act is that which is 'accomplished by discrimination.'" [Citations omitted.] In *Operating Engineers Local 18 (Ohio Contractors Assn.)*, 204 NLRB 681 (1973), the Board explained that there is a rebuttable presumption that arises when a union interferes with an employee's employment status for reasons other than the failure to pay dues, initiation fees, or other fees uniformly required, that the interference is intended to encourage union membership:

> When a union prevents an employee from being hired or causes an employee's discharge, it has demonstrated its influence over the employee and its power to affect his livelihood in so dramatic a way that we will infer—or, if you please, adopt a presumption that-the effect of its action is to encourage union membership on the part of all employees who have perceived that exercise of power. But the inference may be overcome, or the presumption rebutted, not only when the interference with employment was pursuant to a valid union-security clause, but also in instances where the facts show that the union action was necessary to the effective performance of its function of representing its constituency.

Thus, a union bears the burden of establishing that referrals are made pursuant to a valid hiring-hall provision, or that its conduct was necessary for effective performance of its representational function."

Section 8(b)(1)(A) of the Act provides that it is an unfair labor practice for a labor organization or its agents "to restrain or coerce employees in the exercise of the rights guaranteed in section 7 [section 157 of this title]: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein." The rights guaranteed in Section 7 include, in relevant part, the right "to form, join or assist labor organizations . . . and the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorize in Section 8(a)(3) . . . ."

B. Complaint Allegations

1. Respondent's refusal to refer Brunkhorst and Polanka Junior on February 4 and 5

The General Counsel argues "Respondent's failure to adhere to its normal referral criteria was in retaliation for its members engaging in protected Section 7 activity. As such, Respondent violated Section 8(b)(1)(A) and (2) when it refused to refer Brunkhorst and Polanka (Junior) to the Freeman Decorating Services job at the Cornhusker Hotel on February 4 and 5, 2013." (GC Br. 47.) According to the General Counsel, Brunkhorst and Polanka Junior engaged in several acts of concerted protected activity which formed the bases of the Respondent's refusal to refer them to the Freeman job. The Respondent counters that they were not referred for the Freeman job because of "their prior behavior and inability to work with others assigned to that [sic] the Freeman job. . . ." (R. Br. 26.) Further, the Respondent contends that the job required a certified Freeman forklift operator and Wait was one of only two available operators to work those days. I find that this allegation is supported by a preponderance of the evidence.

The Board has consistently held that employees' discussions about wages are inherently concerted. In re *Sabo, Inc.*, 359 NLRB 355 (2012); *Trayco of S.C.*, 297 NLRB 630 (1990); *U.S. Furniture Industries*, 293 NLRB 159 (1989). In *Copper Craft Plumbing*,[28] the Board held that two employees who wanted to meet with a manager to discuss wages were not pursuing individual interest simultaneously. Instead, their issues (wages) directly affected the terms and conditions of employment for both employees. Likewise, the Board has repeatedly held that individual action is concerted if it is conducted with the intention of initiating or inducing group action. See *Family Healthcare, Inc.,* 354 NLRB 254 (2009). Brunkhorst believed that the Respondent had inaccurately calculated her wages for the time she worked at the Nebraska State Fair. She raised the issue in meetings with union officials and with Nebraska State Fair production manager, Adams. Further, in a union meeting she also inquired of other members about the accuracy of their pay and discovered they had the same concerns. In addition, Brunkhorst was open and vocal in her criticism of the union official's billing for the Nebraska State Fair. Her criticism is protected by Section 7 of the Act, regardless of whether or not it is concerted. See, e.g., *International Brotherhood of Team-*

[26] An 8(b)(2) violation has as a derivative an 8(b)(1)(A) violation. *Jacoby v. NLRB*, 233 F.3d 611, 618 (2000); *NLRB v. Iron Workers Union, Local 433*, 767 F.2d 1438, 1440 (1985).

[27] 347 NLRB 1167, 1170 (2006).

[28] 354 NLRB 958 (2009).

sters, Local 657 (Texas Productions, Inc.), 342 NLRB 637 (2004); see also *Plasterers Local 121*, 264 NLRB 192 (1982) (individual employee's right to criticize union leadership clearly protected by the Act.) Further, Polanka Junior and Polanka Senior contacted Adams to support Brunkhorst in her wage dispute. Although Brunkhorst's actions may have initially been motivated by concern for her own wages, the activity was carried out in a concerted fashion. See *Benjamin Franklin Plumbing*, 352 NLRB 525 (2008); *Alton H. Piester*, 353 NLRB 369 (2008), enfd. 591 F.3d 332 (4th Cir. 2010).

Likewise, Brunkhorst's and Polanka Junior's meeting with an official of Complete to discuss their concerns about their paychecks and Complete's business relationship with the Respondent also constitutes protected concerted activity.[29] The contract for services between Complete and the Respondent designates as Complete employees the "IATSE Local No. 151 member and non-member workers who are provided to the production companies and other through IAS|TSE Local No. 151's organization. . . ." (GC Exh. 12.) Therefore, Brunkhorst and Polanka Junior were discussing with their employer (or a party aligned with their employer) subjects that affected the terms and conditions of employment for them and other employees. They talked with John Gross about how Complete obtained their financial information. They also asked him if the contract between Complete and the Respondent was a verbal or signed agreement. The conversation about the method for processing their paychecks, the maintenance of their confidential financial records, and the structure of the agreement with Complete impacted the terms and conditions of their employment with the Respondent. *Copper Craft Plumbing,* at 965.

It is undisputed and Gillaspie admitted that Brunkhorst and Polanka Junior's meeting at Complete was the basis for his decision not to refer them for the Freeman job at the Cornhusker Hotel on February 4 and 5, 2013. (Tr. 78–79.) Although Dale and Dan Stoner had less seniority than Brunkhorst and Polanka Junior, Gillaspie testified that he referred them for the Freeman job because he was "worried about destruction and possible further complications with contractual issues with our vendors." (Tr. 137.) I do not find Gillaspie credible on this point. There is no credible evidence to contradict Brunkhorst's and Polanka Junior's testimony that their meeting with John Gross at Complete was cordial and professional. Likewise, there is no substantive evidence that Respondent's business relationship with Complete was negatively impacted by Brunkhorst's and Polanka Junior's conversation with John Gross. Since it has already been established that their conversation at the Complete office is concerted protected activity, Gillaspie's testimony is a clear admission that the refusal to refer them for the Freeman job was illegal.

I find that Gillaspie's admission, combined with the other less than credible reasons that he gave, support an inference that discriminatory animus was the actual motive for Gillaspie's refusal and failure to refer Brunkhorst and Polanka Junior for the Freeman job at the Cornhusker Hotel on February 4 and 5, 2013.

Accordingly, I find that the General Counsel has established that the Respondent's refusal and failure to refer Brunkhorst and Polanka Junior to the Freeman job on February 4 and 5, 2013, violated Section 8(b)(1)(A) and (2) of the Act.

2. Nonmembers and the Respondent's referral list

In the complaint, the Respondent is charged with discriminating against nonunion employees by granting priority to its members for job referrals for employment with SMG/Pershing and Freeman. (GC Exh. 1-K.) The General Counsel alleges that the "Respondent conducted an unlawful exclusive hiring hall operation when at all material times, Business Agent Perry Gillaspie has utilized membership as a basis for referrals." (GC Br. 48.) The Respondent disputes that it operates an exclusive hiring hall. Further, the Respondent contends that Gillaspie "did the best he could" to create a fair referral list given the information he possessed at the time. (R. Br. 34.)

The Board has long held that unions operating exclusive hiring halls cannot discriminate against and among employees in its referral practices. *Laborers Local 334 (Kvaerner Songer)*, 335 NLRB 597 (2001); *Boilermakers Local 154 (Western Pennsylvania Service Contractors Assn.)*, 253 NLRB 747 (1980), enfd. mem. 676 F.2 687 (3d Cir. 1982) (union's systemic discrimination against nonmembers in the operation of hiring hall violated Section 8(b)(1)(A) and (2) of the Act); *Southwest Regional Council of Carpenters (Perry Olsen Drywall)*, 358 NLRB 1, 8 (2012) ("a union operating an exclusive hiring hall may not discriminate with respect to registration and referrals on the basis of membership or nonmembership in the union . . . ."), citing *Sachs Electric Co.*, 248 NLRB 669, 670 (1980). A union must act fairly and impartially because of its status as the exclusive collective-bargaining representative of employees in a specified unit. *Vaca v. Sipes,* 386 U.S. 171, 177 (1967).

In the case at hand, I have found that the Respondent operated an exclusive hiring hall with SMG/Pershing and Freeman. Therefore, the Respondent's first argument fails. The Respondent also insists it treats nonmembers and members equally for purposes of referrals. The charge against the Respondent stems from the method Gillaspie used to create a referral list when he became the business agent. It is undisputed that the first 30 names Gillaspie placed on the referral list were all union members. Gillaspie insists this is because Polanka Junior did not provide him with a working referral list when Polanka Junior was voted out of office as the business agent. According to Gillaspie, he was therefore unable to create a referral list based on employees' actual seniority dates. Consequently, for every name and contact information he had, Gillaspie reset their seniority date to January 1, 2012. Gillaspie contends it was purely coincidental that the first 30 to 40 names on the referral list were union members. The Respondent argues Gillaspie "did the best he could and acted in the most fair way that he was able with the information he was given." (R. Br. 34.)

[29] Earlier in the facts section, I established that Brunkhorst's and Polanka's conversation with John Gross was cordial. I did not find credible the Respondent's argument that their discussion at the Complete office was disruptive and, or threatening. Therefore, the evidence does not warrant an analysis pursuant to *Atlantic Steel Co.*, 245 NLRB 814 (1979), to determine if, because of their actions, they lost protection of the Act.

I am not persuaded by the Respondent's argument. There is no case law to support absolving the Respondent of using discriminatory methods for referrals because its agent, Gillaspie, "did the best he could" with the information he possessed. Second, in his sworn affidavit to the Board agent investigating the charge, Gillaspie admitted that he first referred workers from the local member list and sometimes contacted "IATSE Local 432 and other sister locals to see if they have any qualified journeymen available. At that point, I will go through my casual or extra list." (Tr. 87.) Although Gillaspie attempted to change his testimony through responses to leading questions by the Respondent's counsel, he presented no credible basis for believing this new version of his referral procedure other than that "he was confused." (Tr. 121.)

Accordingly, I find that the Respondent conducted an unlawful hiring hall operation by using union membership as a basis for referrals in violation of Section 8(b)(1)(A) and 8(a)(3) and 8(b)(2) of the Act.

3. Respondent's suspension of seven members on or about February 7

The General Counsel alleges that the Respondent suspended seven members (Brunkhorst, Haake, Hansen, Hike, Ladely, Polanka Senior, and Polanka Junior) from its exclusive hiring hall because of their protected concerted activity. According to the General Counsel, the Respondent's decision to suspend them for filing lawsuits prior to exhausting internal union remedies is illegal because as an exclusive hiring hall there is a duty of fair representation. Even assuming the Respondent operates a nonexclusive hiring hall, the General Counsel argues that the Respondent violated the Act because "the incidents relied upon for suspension by Respondent all constitute protected concerted activity under the Act." (GC Br. 43.) The Respondent counters that it does not operate an exclusive hiring hall so it has no duty of fair representation. Further, the Respondent contends some members were suspended for discussing internal union matters with outside businesses; others for failing to give the Respondent an opportunity to resolve disputes internally before resorting to the court system; two members for intentionally destroying union property and, or refusing to return documents to the Union; and two members for "directly causing tension between IATSE and parties with which it contracted . . . ." (R. Br. 19.) The Respondent argues these actions violated work rules and constituted egregious misconduct that affected the entire bargaining unit. (R. Br. 20.)

As previously noted, a union's internal discipline process, or the application of an internal union rule, must not negatively impact the employee-employer relationship. Consequently, union discipline cannot stop the reemployment of an employee or impose negative working conditions on employees. See *Plumbers Local 420 (Carrier Corp.)*, supra; *Scofield v. NLRB*, 394 U.S. 423, 429 (1969). When a union operates an exclusive hiring hall, it cannot prevent an employee from being hired or cause an employee's discharge, even if it is pursuant to an internal union rule. The Supreme Court explained that when a union operates an exclusive hiring hall it, "wield[s] additional power . . . by assuming the employer's role,' [and] 'its responsibility to exercise that power fairly increases rather than decreases." *Breininger* at 89. In order to rebut this presumption, the Board had indicated the union must establish that "its interference with employment was pursuant to a valid union-security clause or was necessary to the effective performance of its representative function. *Operating Engineers Local 406 (Ford, Bacon & Davis Construction Corp.)*, 262 NLRB 50, 51 (1982), enfd. 701 F.2d 504 (5th Cir. 1983). A valid union-security clause is not present in this matter. Even if the situation involves a nonexclusive hiring hall, a union owes a "duty of fair representation" to the workers who use its referral service and it cannot deny them referrals because they exercise their Section 7 rights. See *Plumbers Local 13 (MCA of Rochester)*, 212 NLRB 477 (1974); *Teamsters Local 923 (Yellow Cab Co.)*, 172 NLRB 2137, 2138 (1968).

I have previously held that the Respondent operated an exclusive hiring hall; thus the Respondent's first argument (that it did not operate an exclusive hiring hall) fails. Therefore, the Respondent has to overcome the presumption that the suspensions were discriminatorily motivated by showing its actions were necessary to perform its representative function. I find that the Respondent has not met its burden.

During the hearing and in its brief, the Respondent listed several reasons for suspending the seven members. However, the plain language of the letters notifying them of their suspension cites their act of filing a lawsuit prior to exhausting internal union remedies as set forth in article 12, section 6 of the Respondent's local constitution and bylaws. (GC Exh. 8.) Haake, Hansen, Hike, and Ladely were informed that their suspension was based on the lawsuit that they filed against the Respondent before exhausting internal remedies. The suspension letters issued to Polanka Senior, Polanka Junior, and Brunkhorst noted the lawsuits as one of several bases for their suspensions. Moreover, the Respondent agrees that all seven members were suspended because they "failed to exhaust internal remedies before bringing a lawsuit. . . ." (R. Br. 22.)

Gillaspie insisted that their suspensions were necessary because their actions were damaging to the Respondent's business relationships and disruptive to its ability to carry out its "duties and obligations." (GC Exh. 7 and 20; Tr. 148–155, 169, 388–391.) Gillaspie testified that labor calls from Freeman dropped precipitously after the February 5 incident at the Cornhusker Hotel. In addition, Gillaspie claimed after the members filed lawsuits against the Respondent, its relationship with SMG deteriorated. The difficulty, however, with the Respondent's argument is that there is absolutely no evidence that the lawsuits negatively impacted its contractual relationships with the employers. Further, the Respondent's contention that it "legitimately perceived it was in danger of losing those contracts" is not credible. Representatives from the companies that regularly conducted business with the Respondent testified that they were aware of the lawsuits but that it did not negatively influence their business relationships with the Respondent. Lorenz testified that even after becoming aware of the lawsuits, SMG continued to conduct business with and signed a new contract with the Respondent. Similarly, Young testified that he continued to use the Respondent for Freeman's labor calls after Backstrom informed him of the incident involving Brunkhorst and Polanka Junior that occurred on February 4 or 5 at the Cornhusker Ho-

tel. (GC Exhs. 33, 34.) As an example, Young noted that he used the Respondent for a labor call in April 2013. (GC Exh. 34.) Despite Gillaspie's claim that Brunkhorst's and Polanka Junior's actions caused tension in the relationship with Freeman, Young testified that he never had a discussion with Gillaspie or any other union official about the Cornhusker incident. Finally, the business relationship with Complete clearly did not suffer after Brunkhorst and Polanka Junior met with John Gross in January 2013, because the Respondent signed a contract for services with Complete in or on January 13, 2013, and a second agreement on October 4, 2013. (GC Exhs. 10, 11, 12, 13.)

The suspension letter to Polanka Senior also listed as a basis for his suspension the meeting he had with Brunkhorst and Adams about Brunkhorst's disputed wages for working the Nebraska State Fair. Polanka Senior's action to assist Brunkhorst's efforts to recoup wages owed to her is protected concerted activity. The meeting involved a discussion about wages that the Board has consistently held is inherently concerted. *In re Sabo, Inc*., supra. Therefore, the Respondent's admitted use of the incident as a basis for suspending Polanka Senior is likewise a violation of the Act.

In addition to filing a lawsuit, the suspension letter notified Polanka Junior that he was suspended for his visit to the Complete office in January 2013, and the incident at the Cornhusker Hotel. Previously, I found that both acts were protected under the Act. The suspension letter to Brunkhorst also listed as a basis for her suspension the meeting she had with Polanka Senior and Adams about her disputed wages for working the Nebraska State Fair; visiting the Complete office with Polanka Junior; and the incident at the Cornhusker Hotel in February 2013. Earlier I found that each of these acts was also protected concerted activity. Since the Respondent admits these actions were the bases for their suspensions, the Respondent is unable to show that it would have suspended Brunkhorst and Polanka Junior even absent the protected concerted activities.

During the hearing, Gillaspie testified that the members were suspended for other reasons not specifically listed in the suspension letters. As an example, the Respondent alleged Polanka Junior was also suspended because he destroyed data from the Respondent's computer prior to his suspension; and Polanka Senior embezzled the Respondent's money and falsified bills to employers. I find that the reasons are not credible and were formulated simply in anticipation of trial. These are serious allegations, yet Polanka Junior and Senior were never notified that they were part of the bases for their suspensions. Further, in its April 2, 2012 meeting minutes Polanka Junior was cleared of the charges. The relevant portion of the minutes note:

> Executive Board met with Tony Polanka Jr. where he answered all their questions. The Board did not have time to look to review the retrieved material on the computer prior to this meeting. During the questioning, Tony Jr. mentioned that Steve Hike helped him delete some old bills and spread sheets. Steve Hike apologized for his actions. President Buffum stated upon reviewing the "Missing" files which [were] all old bills, which are already printed up and in the filing cabinet as well as some old excel spread sheets. At this time, they could not find anything damning against Tony Jr.

(GC Exh. 17, IATSE 00294.) The executive board also pointed out that the accusation that Polanka Junior maliciously cancelled his cell phone (which was also the phone number listed in the union bulletin) was unfounded because the number listed was still active.

Based on the evidence, I find that the Respondent's reasons for suspending the members from the referral list are simply pretexts for discrimination. Accordingly, I find that the General Counsel has established that the Respondent suspended the seven members because of their concerted protected activity in violation of Section 8(b)(1)(A) and 8(a)(3) and 8(b)(2) of the Act.

4. Respondent's work rules and the collection of fines and assessments

The General Counsel alleges that the plain language of certain provisions of the Respondent's work rules are a per se violation of Section 8(b)(1)(A) of the Act. Since September 29, the Respondent has maintained rules that authorize the Respondent to refuse to refer an employee for work until he or she has satisfied an unpaid fine and/or assessment. (GC Exh. 7.) The General Counsel argues that the Board "has historically found that a labor organization cannot refuse to refer an employee to enforce the collection of a fine and/or assessment." (GC Br. 56.) The Respondent does not dispute the plain language of the work rules, but rather argues the issue is moot because the rules were never enforced against a member since the new executive board has taken office. The Respondent further notes, "when it was brought to IATSE's attention that the language was unenforceable, IATSE began the process of removing the language from its rules." (R. Br. 8.)

The Respondent's arguments are unpersuasive for several reasons. The Board has long held that unions' internal discipline process, or the application of an internal union rule, must not negatively impact the employee-employer relationship. Consequently, union discipline cannot stop the reemployment of an employee or impose negative working conditions on employees. See *Plumbers Local 420 (Carrier Corp.)*, 347 NLRB 563 (2006); *Fisher Theater*, 240 NLRB 678, 691–692 (1979) (unlawful for union to refuse to refer members who failed to pay union fines imposed for violating union's no-bumping policy). In the case at hand, the adopted rules interfere with the employees' ability to procure work through the Respondent's exclusive hiring hall. The Respondent acknowledges that the work rules are unenforceable; and the reason for its unenforceability is due to the restrictions the rules place on the employer's ability to hire an employee with uncollected fines and that employee's ability to obtain employment. The Respondent contends that the issue is moot because the current executive board has never enforced the rule. However, a violation can be found even if the Respondent has never imposed discipline. See *Teamsters Local 492 (United Parcel Service)*, 346 NLRB 360 (2006).

The Respondent's alternate argument, the issue is moot because it is in the process of removing the language from its rules, is likewise unpersuasive. First, there is no Board law to

support this argument; and the Respondent does not present any. Further, it is undisputed that since at least September 29, the Respondent has maintained these illegal job referral rules. There is also no evidence in the record to support a finding that all of the unlawful rules have been removed. Consequently, since September 29 to the present the rules would have a reasonable tendency to restrain and coerce employees in the exercise of the rights guaranteed to them in Section 7 of the Act.

Accordingly, I find that the Respondent violated Section 8(b)(1)(A) when it created the work rules at sections 9.1.3, 9.1.3.1, 9.1.3.2, 9.1.3.3. (GC Exh. 7.)

5. Respondent's failure and refusal to remit V-fund moneys to nonmembers

The General Counsel charges that the Respondent's failure and refusal to pay money from the V-fund to nonmembers violates Section 8(b)(1)(A) of the Act. The Respondent argues "IATSE has not yet remitted V-fund monies to non-members because it is waiting to see if the NLRB or Lancaster District Court will find the Pershing/SMG Addendum to be illegal in the first instance." (R. Br. 36.)

The V-fund money was derived from a portion of the processing fee that the Respondent charged employers for referring laborers to them. Members were paid annually from the V-fund at a rate of 5 percent of the employee's yearly gross earnings. Despite referring members and nonmembers for employment and charging employers a fee for those referrals, it is undisputed that the Respondent has never paid money out of the V-fund to its nonmembers. The Respondent has failed to present any authority to support its defense that it is waiting for a court order to direct it to pay the moneys to its nonmembers and no precedent supports its position.

Accordingly, I find that the Respondent's failure and refusal to pay V-fund moneys to nonmembers violated Section 8(b)(1)(A) of the Act.

6. Respondent's failure and refusal to remit V-fund moneys to members Haake, Hansen, Hike, Ladely, and Polanka Senior

The General Counsel contends that the Respondent breached its duty of fair representation when it refused to pay V-fund bonuses to members who filed lawsuits against it. The General Counsel charges that the "Respondent failed to pay the objecting members their V-fund bonus for arbitrary, irrelevant, and discriminatory reasons." (R. Br. 17.) The Respondent counters that the charge should be dismissed because the Board does not have jurisdiction over SMG/Pershing or Freeman and the V-fund did not relate to Freeman. Second, the Respondent argues "there was no ratified agreement by the local to pay a V-fund to the members." (R. Br. 35.) I find that the Respondent's arguments fail for the following reasons.

I have already determined that the requirements for the Board to assert jurisdiction have been established in this case. Second, failure to ratify the contract authorizing the Respondent to pay V-fund bonuses to members is not a valid or credible defense in this instance.

Article 7, section 5 of the Respondent's local constitution and bylaws gives the business agent full authority to "represent it in all dealings with employers. . . ." (GC Exh. 8.) It goes on to state:

> The Business Agent shall be a member, ex-officio, of all negotiating committees. Contracts negotiated by any such committee shall be subject to ratification of the membership unless the membership has in advance empowered the Committee to conclude the contract without ratification.

(GC Exh. 8.) In addition to its processing fee, 5 percent for all labor referred was charged by the Respondent to employers for the V-fund bonus. Freeman was excluded from paying a processing fee that included the V-fund bonus because it administered its own payroll. SMG/Pershing paid this fee and it was explicitly spelled out in the addendum to the LOU entered into in May 2011 between SMG/Pershing and the Respondent. It is undisputed that neither the LOU, nor the addenda were ratified by the members. (GC Exhs. 3, 27.) However, it is irrelevant because despite the contract not being ratified, the Respondent paid V-fund bonuses to all members who elected payment except for those members who filed lawsuits against it. Additionally, at the membership meeting on April 2, 2012, Gillaspie made a motion to approve payment of the 2011 V-fund bonus. His motion was seconded by Tom Stickney and approved. (GC Exh. 17.)

The Respondent also reasons that it did not pay the V-fund bonuses because "there were legitimate concerns over the legality of paying the funds to members and not paying them to nonmembers." (R. Br. 36.) Further, the Respondent contends that except for Haake and Hansen, the remaining complaining members did not submit "the required request form for the payment by the deadline established by the secretary (or ever)." (R. Br. 36.) Again, I reject the Respondent's arguments. If the Respondent had a legitimate concern about the legality of making V-fund payments to members and not nonmembers, then the Respondent would not have paid any member until the issue had been settled in court. Instead, the Respondent paid every member who elected to receive the bonus, while refusing to pay the members who asked for their V-fund bonus but also consulted a lawyer about their concerns over administration of the V-fund; collectively objected to the V-fund decisions made by the executive board; and collectively filed a lawsuit to get the V-fund moneys owed to them. Second, it is clear to me that the Respondent's requirement for members to submit a form electing to get their V-fund bonus was an attempt to embarrass and coerce them into foregoing it. (See GC Exh. 16.) I find that this action was arbitrary and unrelated to whether they were entitled to receive the bonus they had already earned and that had been a past practice since at least the early 1990s. (Tr. 223.) There is no evidence that in all the years members received V-fund bonuses, they ever had to submit a form asking for it. Therefore, I find that the Respondent's refusal to make V-fund payments to those members who had consulted a lawyer over the issue and filed a lawsuit to recoup their bonus money was based on arbitrary and discriminatory reasons.

Accordingly, I find that the Respondent's failure and refusal to pay V-fund moneys to Haake, Hansen, Hike, Ladely, and Polanka Senior violated Section 8(b)(1)(A) of the Act.

7. Respondent's constitution and bylaws allegedly contain unlawful provisions

The General Counsel alleges that article 12, section 6 of the Respondent's constitution and bylaws violates Section 8(b)(1)(A) of the Act because it requires members to exhaust its internal remedies without including the 4-month limitation required by section 101(a)(4) of the LMRDA. The Respondent, however, counters that the LMRDA "does not require the Constitution and Bylaws to build into its provisions an explanation that the requirements are limited to 4 months; it simply allows the member to proceed with his action in court after he or she has pursued reasonable hearing procedures for four months." (R. Br. 5–6.)

It is undisputed that the Respondent's constitution and bylaws require members to exhaust all internal remedies before seeking relief from outside tribunals. Likewise, the constitution and bylaws do not include language containing the 4-month limitation period set forth in the LMRDA. However, the General Counsel has the burden of proving the allegations in a complaint, and I find that the General Counsel failed to articulate a strong argument or provide case law to establish that the LMRDA requires the Respondent to include in its constitution and bylaws an explicit clause noting the LMRDA's 4-month limitation period.

The record contains minimal testimony or other evidence to support the General Counsel's case on this issue. Accordingly, I recommend dismissal of this allegation in the complaint.

C. Respondent's 10(b) Argument as an Affirmative Defense

The Respondent argues that the allegation pertaining to the referral procedures is barred by Section 10(b) of the Act because the Respondent did not maintain a referral hall in the 6 months prior to the filing of the amended charge. According to the Respondent, it maintains a list of available workers but "IATSE no longer chooses who will be sent on any particular call, and has not since February or March of 2013." (R. Br. 37.) The General Counsel contends "Gillaspie and Respondent attempt to deflect any referral responsibilities to Complete Payroll by arguing that Respondent has nothing to do with referrals and has not for some time. Respondent's claim is not accurate."

For the reasons discussed in section II, subsection C of this decision, I reject the Respondent's argument, and find that the Respondent at all times maintained control over and referred workers from its exclusive hiring hall. Therefore, the Respondent's 10(b) argument has no merit.

CONCLUSIONS OF LAW

1. The Respondent, International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada Local No. 151 (SMG and the Freeman Companies d/b/a Freeman Decorating Services, Inc.), is a labor organization within the meaning of Section 2(5) of the Act.

2. The Respondent did operate an exclusive hiring hall with respect to referral of employees to SMG/Pershing and the Freeman Companies d/b/a Freeman Decorating Services, Inc.

3. By refusing to refer Sheila Brunkhorst and Tony Polanka for a job with Freeman because they engaged in protected concerted activity, the Respondent has violated Section 8(b)(1)(A) and (2) of the Act.

4. By discriminating against nonmembers by granting priority to its members for job referrals for employment with SMG/Pershing and Freeman, the Respondent has violated Section 8(b)(1)(A) and 8(a)(3) and 8(b)(2) of the Act.

5. By maintaining work rules that authorize the Respondent to refuse to refer an employee for work until he or she has satisfied an unpaid fine and/or assessment, the Respondent has violated Section 8(b)(1)(A) of the Act.

6. By suspending seven members (Brunkhorst, Haake, Hansen, Hike, Ladely, Polanka Senior, and Polanka Junior) because they engaged in protected concerted activity, the Respondent has violated Section 8(b)(1)(A) and 8(a)(3) and 8(b)(2) of the Act.

7. By failing and refusing to pay money from its V-fund to nonmembers, the Respondent has violated Section 8(b)(1)(A) of the Act.

8. By failing and refusing to pay money from the Respondent's V-fund to Haake, Hansen, Hike, Ladely, and Polanka Senior because they filed lawsuits against it, the Respondent has violated Section 8(b)(1)(A) of the Act.

9. The Respondent did not violate Section 8(b)(1)(A) of the Act when it did not include explicit language in its constitution and bylaws an explanation that there is a 4-month limitation required by section 101(a)(4) of the LMRDA.

10. The above violations are unfair labor practices that affect commerce within the meaning of Section 2(6) and (7) of the Act.

11. The Respondent has not violated the Act except as set forth above.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily refused to refer Sheila Brunkhorst and Tony Polanka to the Freeman job at the Cornhusker Hotel on February 4 and 5, 2013, I shall recommend that the Respondent be ordered to make the employees whole for any loss of earnings and other benefits they suffered as a result of the discrimination against them from the date of the discrimination to the date they are reimbursed for their losses. The Respondent must notify them in writing that these actions have been completed and that the refusal to refer them for the job will not be used against them in any way.

The Respondent having discriminatorily granted priority to its members for job referrals to the detriment of nonmembers, I shall recommend the Respondent create a referral list that does not discriminate based on membership status.

The Respondent having maintained work rule provisions that unlawfully authorize the Respondent to refuse to refer an employee for work until he or she has satisfied an unpaid fine and/or assessment, I shall recommend that the Respondent remove the unlawful provisions. The Respondent must notify workers that the unlawful provisions have been removed.

The Respondent having discriminatorily suspended members (Sheila Brunkhorst, Les Haake, Dennis Hansen, Steve Hike, Danny Ladely, Anthony Polanka, and Tony Polanka) from its referrals from its exclusive hiring hall, I shall recommend that the Respondent be ordered to make the employees whole for any loss of earnings and other benefits they suffered as a result of the discrimination against them from the date of the discrimination to the date they are reimbursed for their losses. I shall also recommend that the Respondent rescind their suspensions, restore them to the referral list in rightful order or priority, and remove all reference to their suspensions from the Respondent's official and unofficial records. The Respondent must notify the suspended members in writing that these actions have been completed and that the removal will not be used against them in any way.

The Respondent having discriminatorily refused to pay V-fund bonuses to members Les Haake, Dennis Hansen, Steve Hike, Danny Ladely, Anthony Polanka, and nonmembers, I shall recommend that the Respondent remit V-fund payments owed to those members and nonmembers. The Respondent must notify the affected members and nonmembers in writing that these actions have been completed.

Backpay because of the discriminatory suspensions, failure to refer for work, and failure to remit V-fund money shall be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest as provided in *New Horizon*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010) enf. denied on other grounds sub. nom. *Jackson Hospital Corp. v. NLRB*, 647 F.3d 1137 (D.C. Cir. 2011).

Respondent shall file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters. Respondent shall also compensate Sheila Brunkhorst, Les Haake, Dennis Hansen, Steve Hike, Danny Ladely, Anthony Polanka, Tony Polanka, and other affected workers for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year, *Latino Express, Inc.,* 359 NLRB 518 (2012).

Further, in accordance with the Board's decision in *J. Piccini Flooring*, 356 NLRB 11, 15–16 (2010), I shall recommend that the Respondent be required to distribute the attached appendix and notice to members and employees electronically, if it is customary for the Respondent to communicate with employees and members in that manner. Also in accordance with that decision, the question as to whether a particular type of electronic notice is appropriate should be resolved at the compliance state. Id, slip op. at p. 3. See, e.g., *Teamsters Local 25*, 358 NLRB 54 (2012).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[30]

[30] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent, International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada Local No. 151 (SMG and the Freeman Companies d/b/a Freeman Decorating Services, Inc.), Lincoln, Nebraska, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to refer employees from its exclusive hiring hall, who are or rightfully should be on the Respondent's referral list, for work with employers because those individuals exercised the rights guaranteed to them under Section 7 of the Act.

(b) Discriminating against nonunion employees by granting priority to union members for job referrals to employers, thus attempting to cause or causing those employers to discriminatorily fail to employ employees because of their status as nonunion members.

(c) Maintaining unlawful rules and policies that authorize the Respondent to refuse to refer employees for work from its exclusive hiring hall until he or she has satisfied an unpaid fine and/or assessment.

(d) Suspending employees from its exclusive hiring hall referral list, who are or rightfully should be on the Respondent's referral list, because those employees exercised the rights guaranteed to them under Section 7 of the Act.

(e) Failing and refusing to remit V-fund payments to members because those individuals exercised their rights guaranteed to them under Section 7 of the Act; and nonmembers because of their membership status.

2. Take the following affirmative action necessary to effectuate the purposes and policies of the Act.

(a) Within 14 days from the date of the Board's Order, make Sheila Brunkhorst and Tony Polanka whole for any loss of earnings and benefits suffered as a result of the Respondent's unlawful refusal and failure to refer them from its exclusive hiring hall to the Freeman Decorating Services job on February 4 and 5, 2013.

(b) Within 14 days from the date of the Board's Order, create a referral list that does not discriminate based on membership status.

(c) Within 14 days from the date of the Board's Order, rescind or make lawful the Respondent's work rules at sections 9.1.3; 9.1.3.1; 9.1.3.2; and 9.1.3.3.

(d) Within 14 days from the date of the Board's Order, make whole Sheila Brunkhorst, Les Haake, Dennis Hansen, Steve Hike, Danny Ladely, Anthony Polanka, and Tony Polanka for any loss of earnings and other benefits they suffered as a result of the discrimination against them from the date of the discrimination to the date they are reimbursed for their losses. Further, within 14 days from the date of the Board's Order, remove from the Respondent's files any reference to the unlawful suspensions, and within 3 days thereafter notify the aforementioned employees in writing that this has been completed and that the suspensions will not be used against them in any way.

(e) Within 14 days from the date of the Board's Order, remit V-fund payments, including interest, owed to nonmembers and members Les Haake, Dennis Hansen, Steve Hike, Danny

Ladely, and Anthony Polanka, and within 3 days thereafter notify the aforementioned employees in writing that this has been completed.

(f) Within 14 days after service by the Region, post at its facility in Lincoln, Nebraska, copies of the attached notice marked "Appendix."[31] Copies of the notice, on forms provided by the Regional Director for Region 14, Subregion 17, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 29, 2012.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 20, 2014

APPENDIX

NOTICE TO MEMBERS AND EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain on your behalf with your employer
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to refer employees from our exclusive hiring hall, who are or rightfully should be on our referral list, for work with employers because those individuals exercised the rights guaranteed to them under Section 7 of the Act.

WE WILL NOT discriminate against nonunion employees by granting priority to union members for job referrals to employers, thus attempting to cause or cause those employers to discriminatorily fail to employ employees because of their status as nonunion members.

WE WILL NOT maintain unlawful rules and policies that authorize us to refuse to refer employees for work from our exclusive hiring hall until he or she has satisfied an unpaid fine and/or assessment.

WE WILL NOT suspend employees from our exclusive hiring hall referral list, who are or rightfully should be on the referral list, because those employees exercised the rights guaranteed to them under Section 7 of the Act.

WE WILL NOT fail and refuse to remit V-fund payments to members because those individuals exercised their rights guaranteed to them under Section 7 of the Act; or fail and refuse to remit V-fund payments to nonmembers because of their membership status.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the rights guaranteed to them by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, refer employees from our exclusive hiring hall, who are or rightfully should be on our referral list, for work with employers because those individuals exercised the rights guaranteed to them under Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, stop discriminating against nonunion employees by granting priority to union members for job referrals to employers, thus attempting to cause or cause those employers to discriminatorily fail to employ employees because of their status as nonunion members.

WE WILL, within 14 days from the date of the Board's Order rescind the unlawful rules and policies that authorize us to refuse to refer employees for work from our exclusive hiring hall until he or she has satisfied an unpaid fine and/or assessment.

WE WILL, within 14 days from the date of the Board's Order make whole employees suspended from our exclusive hiring hall referral list, who are or rightfully should be on the referral list, because those employees exercised the rights guaranteed to them under Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order remit V-fund payments to members who were denied those payments because they exercised their rights guaranteed to them under Section 7 of the Act; and remit V-fund payments to nonmembers who were denied those payments because of their membership status.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful suspensions, and within 3 days thereafter notify, in writing, those employees who were suspended that this has been completed and that the suspensions will not be used against them in any way.

WE WILL file a report with the Social Security Administration allocating back payments to the appropriate quarters.

WE WILL compensate the affected employees (both members

[31] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

and nonmembers) for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year.

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, MOVING PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFTS OF THE UNITED STATES, ITS TERRITORIES AND CANADA LOCAL NO. 151 (SMG AND THE FREEMAN COMPANIES D/B/A FREEMAN

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/14-CB-101524 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.